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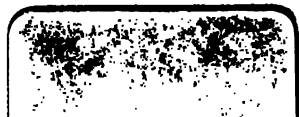
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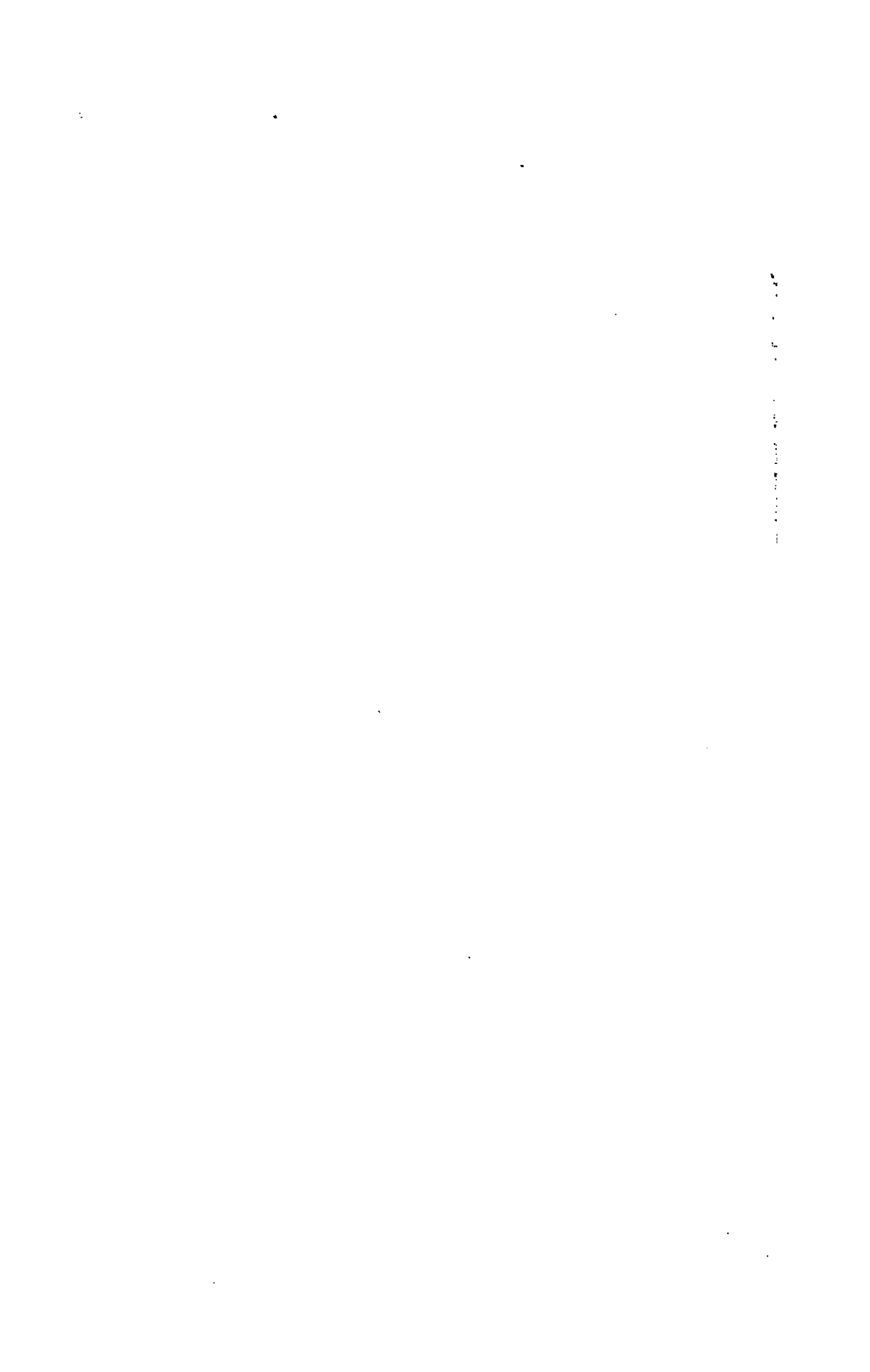
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CLIFFORD AND STEPHENS'S *LOCUS STANDI* REPORTS.

VOL. II., PART I.

COURT OF REFEREES

ON

Private Bills in Parliament.

26

CASES

AS TO

THE *LOCUS STANDI* OF PETITIONERS

DECIDED DURING THE SESSION 1870.

REPORTED BY

FREDERICK CLIFFORD AND PEMBROKE S. STEPHENS,

BARRISTERS-AT-LAW.

LONDON:

BUTTERWORTHS, 7, FLEET STREET,

Law Publishers to the Queen's Most Excellent Majesty;

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P R E F A C E .

THE contents of the present number form Vol. II., Part I., of REPORTS OF CASES HEARD BEFORE THE COURT OF REFEREES IN PARLIAMENT. The present Reports include the whole of the Cases decided by the Court during the Session of 1870, and are, by permission, based on the same official records as were placed at the disposal of the Reporters in the preparation of their published Reports for the Sessions 1867-8-9.

ELM COURT, TEMPLE,

March 1, 1871.

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COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1870.

. Where a Standing Order is quoted or referred to in the Reports, the numbering is that of the Standing Orders for the Session 1871.

BUXTON GAS BILL.

4th March, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of the LONDON AND NORTH WESTERN RAILWAY COMPANY.

Railway—Level Crossings—Bridges—Interference with by Gas Company—Passenger Traffic—Safety of.

A railway company whose works or level crossings may be injuriously interfered with by the operations of a gas company, under a bill promoted by that company, has a *locus standi* against the clauses of a bill comprising such works and crossings within its limits.

This was a gas bill, and within the area of supply were portions of two railways (including two level crossings and one over-bridge) belonging to the London and North Western railway company, or in which that company were interested.

The petition alleged that in the exercise of the powers sought to be obtained by the bill, and in particular by the 47th and 48th clauses, the promoters would, unless prevented by clauses to be inserted, be enabled to interfere injuriously with lands and property, railways, bridges, and works, belonging to the petitioners, or in which they were interested, so as to endanger the structure of their works, and the safe and convenient working of their railways, and the conduct of traffic thereon, and so as to deprive them of the free use and enjoyment of their lands and property; that no such interference ought to be permitted; and the petitioners asked that provisions should be inserted in the bill

for their protection, to prevent the injury which they would otherwise sustain.

The *locus standi* of the petitioners was objected to because (1) no part of the land, buildings, or property of the petitioners was taken or used; (2) the bill contained no provisions injuriously affecting any railway or property of the petitioners, or in which they were interested; and (3) no ground of objection was disclosed which, according to the practice of Parliament, entitled the petitioners to a hearing.

Merewether, Q.C. (for petitioners): The London and North Western railway company have two railways within the limits proposed to be taken by the promoters, viz., the Buxton railway and the Cromford and High Peak railway, on which lines there are level crossings and bridges which may be interfered with under the powers of the bill; inasmuch as they are not private grounds upon which the promoters will be prohibited from entering under the Gas Works Clauses Act, incorporated in the bill. We seek to go before the Committee, not only in our own interest, but in that of the public, and obtain protective clauses; for if by the operations of the gas company the level crossings are rendered unsafe for railway traffic, accidents may happen to travellers, and we ourselves may become liable under Lord Campbell's Act. The point has been discussed and decided before; and the *Woolton Gas Bill, 1867*—*Petition of London and North Western Company* (Cliff. & Steph. 61) is exactly in point. I now ask for an authoritative decision, which may settle once and for all this question between gas companies and railway companies. We only ask for clauses.

Shrubsole (Parliamentary agent, for promoters): We were informed that the promoters did not interfere in any way with any road which the London and North Western company cross except by a bridge. On hearing that this is not so, I at once withdraw the objection.

Locus standi Allowed upon clauses.

Agents for Bill, *Dyson & Co.*

Agent for Petitioners, *Blenkinsop*

KING'S LYNN CONSUMERS' GAS BILL.

4th March, 1870.—(Before Mr. DODSON, M.P.,
Chairman; Mr. BONHAM-CARTER; and Mr.
RICKARDS.)

- (1) Petition of JOHN MALAM, Esq.
(2) Petition of OWNERS, &c, OF KING'S LYNN.

Practice—Notice of Objections—"Seven Clear Days"—Expiring on Sunday—Rival Gas Bills—Supply of Town by Private Contract—Competition—Representation.

The rule that notice of objections to the *locus standi* of petitioners must be lodged "within seven clear days" after the petition is deposited, allows such objections to be lodged on the eighth day; and when the eighth day falls on Sunday, the notice of objection is good if deposited on the day following.

Where a town, by arrangement with the Improvement Commissioners, is supplied with gas from works belonging to a private owner, such owner has a *locus standi* against a bill promoted by ratepayers for the establishment of competing works.

As to owners, lessees, and occupiers within the borough, who petitioned on general grounds, against the same bill, but whose land or property was not taken, or injuriously affected, the Corporation also petitioning on similar grounds against the bill:

Held, that the owners, &c. had not a *locus standi*.

The bill was one for supplying with gas the town of King's Lynn and adjacent parishes.

The petitioner, Mr. Malam, had for some years supplied gas to the town without statutory powers, under a contract with the Improvement Commissioners of King's Lynn. He opposed the bill on the ground of competition, the promoters proposing to establish a new and independent company for the supply of the town.

The petitioning owners, occupiers, and inhabitants, 150 in number, alleged that two competing gas bills were before the House of Commons, and that it was not expedient that both companies should have power to light the same district, inasmuch as any such competition would not ultimately be of advantage to the consumers, and such competition and duplication of works and pipes would involve an unnecessary outlay of capital, and interference with and breaking-up of public roads and streets; that by the King's Lynn Gas Bill it was sought to incorporate a company for the purpose of carrying on the existing gasworks, of which Mr. Malam, was the owner, which had been in operation for the last fifty years, and were the only gasworks at King's Lynn; that the site they occupied was unobjectionable; that so long as a good and sufficient supply of gas

was thus secured at a reasonable price no public advantage would be derived from the incorporation of a new and rival company; and that any such competition would result in needless loss to the shareholders with no corresponding advantage to the public.

The petition of Mr. Malam was deposited at the private bill office on a Saturday. The notice of objections was lodged on the Monday week following.

The *locus standi* of the petitioner was objected to because (1) no land or other property of his will be taken or used; (2) he is not the owner, lessee, or occupier of property, nor otherwise interested in any property proposed to be taken or used; (3) no right or interest of his is altered or affected; (4) the petitioner, who is non-resident, is an individual trader, and does not possess any parliamentary or other power to break up streets within the town of King's Lynn, or the district proposed by the bill, or to light the town or the proposed district; (5) the petitioner accordingly has no right or claim to object to the establishment of a Company with parliamentary powers, and under parliamentary restrictions for the public and private lighting of the town; (6) various allegations in the petition relate, not to this bill, but to another bill now pending in Parliament called the King's Lynn Gas Bill, and thereby the petitioner in effect admits that the existing supply of gas to the town is defective, and that it is desirable to erect new works, and to establish a company with parliamentary powers; (7) the petitioner as an individual has no right to be heard on behalf of, or as representing the promoters of the King's Lynn gas bill, who do not themselves petition; (8) he is not named in that Bill either as a member or director of the company proposed to be incorporated, but the real object of that bill is to enable the petitioner to sell his works and to terminate such connection as he may now possess with the town of King's Lynn; (9) the allegations of the petition are insufficient and do not show how the bill will injuriously affect any property or right of his; (10) the competition referred to is not of a description entitling the petitioner to be heard; (11) he does not allege that the preamble, as a whole, cannot be substantiated, but only portions thereof; (12) he does not possess any right in, over, or relating to the streets and thoroughfares of the town, and with regard to such streets and thoroughfares, or any interference therewith, the corporation, and not the petitioner, are the proper persons to appeal against the bill; (13) he cannot be heard according to practice.

The *locus standi* of the owners, lessees, &c., was objected to, because (1) none of the lands of the petitioners will be entered upon, taken or used, or injuriously affected; (2) it is not alleged that the works proposed are objectionable as to site, or will injuriously affect any house or property of the petitioners, or that any of the petitioners reside, or that any property of theirs is situate within 300 yards of the proposed works or site; (3) the petitioners do not state that they are now, or will hereafter, become consumers of gas, and accordingly have no right to be heard; (4) the petitioners do not allege

that they have subscribed towards, or are promoting, or that they have authority to act for or to enter into any undertaking on behalf of the promoters of either of the bills referred to as competing bills; (5) it is not the fact that the petition was signed at, or emanated from, any meeting of the inhabitants of King's Lynn held in opposition to the bill, and the petition accordingly is one of individual residents; (6) the petitioners do not represent the inhabitants within the meaning of S. O. 131; (7) as to interference with the public streets and other matters complained of, the petitioners are represented by the Corporation of King's Lynn, who are also petitioners against the bill, and who accordingly are the proper parties (if any) to be heard upon all such matters in opposition to the bill; (8) no facts or reasons are disclosed, entitling the petitioners to a hearing according to practice; (9) the petition contains various statements, some of them matters of fact, and others matters of opinion; but it is not alleged or shown how any specific right, property, privilege, or interest of the petitioners is or may be affected.

Denison, Q.C. (for both petitioners): I take the preliminary objection that the notices of objection have not been served in time.

Pembroke Stephens (for promoters): We have received no notice of this objection.

Denison: That does not matter. We gave notice at the Referees' office. The notices of objections are required to be served "not later than seven clear days" after the deposit of the petition; and the eighth day being in this case a Sunday, according to all parliamentary practice the notices ought to have been delivered on the Saturday, and not on the Monday, as was done here.

Mr. RICKARDS: In the case of election petitions, when the last day falls on a Sunday, the parties have till the next day.

Stephens: I refer to the decision in the *London, Chatham and Dover Bill*, 1866 (*Smeth. 97*).

Denison: In that case the service was on the eighth day; whereas here the service was on the ninth day.

Mr. RICKARDS: I am informed by the clerk to the Referees that the service is held to be in time if made on the Monday.

Shrubsole (Parliamentary agent) called and examined by *Denison*: I know of nothing whatever specified by the S. O. of this House to be done on a certain day, which is allowed to be done on the following day, if that certain day is Sunday. Thus, if the 30th of November comes on a Sunday, we cannot deposit our plans on the 1st December. We do so on the 29th. This year, according to the S. O., we had to deposit memorials against the first 100 bills by the 9th January; but the ninth being a Sunday, not a single memorial was deposited on any other day than the 8th. So again with regard to petitions, for the deposit of which ten clear days after the first reading is allowed. If the eleventh day happens to be on a Sunday, we deposit the petition on the Saturday.

Mr. RICKARDS: Do you mean that it would not otherwise be received?

A.: It would be received in the House of

Commons; but it would be objected to before the Committee on the bill as being deposited too late. In the House of Lords it would not be received; but in this House you can deposit a petition, for what it is worth, to the very day of the sitting of the Committee.

Mr. RICKARDS: Where a rule says such an act shall be done on or before the 30th November, that is not quite like the case where the rule gives a certain number of days?

A.: Take the case of petitions. There the rule is that they shall be deposited not later than ten clear days after the first reading. If, therefore, a bill were read the first time on a Thursday, the time for receiving a petition against that bill would be Sunday week. But I should deposit it on the Saturday, not the Monday, for the order is "not later than."

THE CHAIRMAN: The order in the case reported in *Smethurst* ran thus, "within seven clear days," and a deposit on the eighth day was held to be good. Since then the rule has been altered, and it is now "not later than seven clear days."

Cross-examined by *Stephens*: Q. I understand that in the cases you have mentioned, you deposit these documents, for greater precaution, a day before that named in the rule; but I do not understand you to say that such is the practice of the Private Bill office?

A.: I say the clerks in the Private Bill office will take anything that is handed in, without reference to the time of deposit. They do not consider whether the time is too early, or too late. They take everything brought to them, if it is properly addressed.

THE CHAIRMAN: When a petition is deposited in the Private Bill office, and received after time, do the clerks endorse anything on it?

A.: They would state on the face of the memorial that it was deposited in the Private Bill office on such a day, and sign that memorandum.

Mr. RICKARDS: You say the Private Bill office do not make any objection, whenever the memorial may be deposited. Then the only time for objection would be before the Committee?

A.: Yes.

Q.: Did you ever hear of any objection being taken before a Committee on that ground?

A.: I know there was something of the kind in a *Midland* case. I believe my partner, Mr. Coates, raised the objection successfully before the Committee on that bill. The S. O. which governs the presentation of petitions in the House of Commons says, that no petitioner shall be heard, unless his petition shall have been deposited not later than ten clear days after the first reading, making use of much the same expressions that you do here; and I think other agents in the room will agree that if, under circumstances like these, you did not deposit on the Saturday you would be too late.

Stephens: The first and the second Sunday being *dies non*, the promoters could only get seven clear days by serving the notice on the Monday. It was served on the Monday morning as soon as the office was open, and therefore the petitioners were not prejudiced.

Denison: The Order is "not later than seven clear days," and there is a provision in the rules

enabling parties, if they cannot get ready the notices in time, to apply to the Referees for further time. The promoters might have availed themselves of this provision.

H. B. Maynes (Chief Clerk in the Private Bill Office) examined:

Mr. RICKARDS: We wish to know the practice in the Private Bill office, in cases where the order of the House directs that an act shall be done within a certain number of days, and the last day happens to be a Sunday.

A.: Whether with regard to the deposit of petitions, or to notices of first or second reading, it has been held that the deposit is good if made on the Monday.

Q.: How long has that been the practice?

A.: With regard to the allowing of not more than "seven clear days" in reference to second readings, the practice has prevailed for the last ten or fifteen years. With regard to petitions, there has been an uncertainty as to whether they should be allowed to be deposited on the Monday, where Sunday was the last day.

THE CHAIRMAN: What is the wording of the Order?

A.: The wording of S. O. 127 is as follows,—
"No petitioners against any private bill shall be heard before the Committee on the bill, unless their petition shall have been prepared and signed in strict conformity with the rules and orders of this House, and shall have been presented to this House by having been deposited in the Private Bill office not later than ten clear days after the first reading of such bill, except where the petitioners shall complain of any matter;" and so on. Then we have an old order when Lord Eversley was Speaker, signed by Mr. Lefroy, which I will read. "It is decided that the words 'not later than three clear days,' 'not later than ten clear days,' and other limits of time, in the same words, in the S. O. will in each case extend to the Monday, or the next sitting following the last day limited." This applied rather to the S. O. which says seven clear days between the first and second reading, and so many days before petitions for bills could be deposited: but we consider that the spirit of this order applies equally to the deposit of petitions, the words being precisely the same. The words are very different with regard to deposits in November, and with regard to the deposit of memorials. The words there are, that they shall be deposited on or before a fixed day.

THE CHAIRMAN: The words "not later than ten clear days" allow the petition or memorial, or whatever it may be, to be deposited on the eleventh day?

A.: Yes.

Q.: If that eleventh day is a Sunday, the twelfth day is considered the eleventh day for that purpose?

A.: Yes.

Q.: When a petition is deposited on the twelfth day, do you endorse on it when it is received?

A.: The date of the deposit is endorsed.

Q.: Do you endorse on it that it is deposited after the proper time if it is late?

A.: No. The practice is this: all petitions are endorsed with the date of their deposit; but only those petitions which are deposited

within time are sent to the Committee office. The other petitions are considered as not being petitions which ought to go before the Committee, and they are kept in the office.

Mr. RICKARDS: You take them in, but do not forward them to the Committee?

A.: Just so.

THE CHAIRMAN: Do you endorse anything to that effect?

A.: No; but strict orders are given when the deposit is after time that the petition should not be sent up.

Q.: If the petitions are deposited on the twelfth day, the eleventh day being Sunday, you forward them?

A.: We consider that they come within the meaning of the S. O., and we send them up to the Committee office.

Denison: Is there any order of the House to that effect; or is it an interpretation which has grown up in the office?

A.: It is the interpretation which has grown up in the office, under the advice of the authorities of the House.

THE REFEREES held that the objection taken by the promoters to the time of deposit was not a valid one.

Denison: I appear on behalf of the *locus standi* of Mr. John Malam, who has been supplying gas in Lynn for about fifty years, under contract with certain Commissioners having the control of the streets, and at the present moment negotiations are pending with a view to the extension of the contract which has expired. The promoters propose to establish a new company to supply Lynn with gas, there being the following recital in the Preamble:—"And whereas the town of Lynn and certain parishes in the county of Norfolk, are at present lighted with gas by gasworks belonging to J. Malam, Esq., and such supply of gas is not afforded under any parliamentary powers and restrictions;" or, in other words, whereas John Malam is supplying gas inadequately, therefore we propose to establish a new company, and to ruin John Malam if we can.

THE CHAIRMAN: We will hear what Mr. Stephens has to urge on the case of Mr. Malam, before we hear Mr. Denison further.

Stephens: The promoters objected to the *locus standi* of Mr. Malam, because he was himself promoting a competing bill, which would, as a matter of course, be referred to the same group as the present bill; and to give him a *locus standi* against the present bill, would be to give him the means of a double opposition; but having heard the opening of Mr. Denison, I will not oppose the *locus standi* of John Malam.

Denison: With respect to the petition of Owners, &c., in King's Lynn, after the decision of the Referees to-day [in the *Northampton Markets bill*, p. 6], I will not argue the *locus standi* of those petitioners.

By the COURT: The *locus standi* of John Malam is Allowed. The *locus standi* of Owners, &c., is Disallowed.

Agents for the Bill, *Cruse & Bigg*.

Agents for the Petitioners, *Dyson & Co*.

KING'S LYNN GAS BILL.

4th March 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of OWNERS, LESSEES, AND OCCUPIERS OF PROPERTY in the TOWN OF KING'S LYNN.

Practice—Heading and Title of Petitions and Objections—Gas Bill—Petition of Inhabitants and Consumers—Representation.

The heading and endorsement of objections to the *locus standi* of petitioners need not be an exact description of all the petitioners. Thus, upon a petition against a gas bill, such petition being signed by 66 persons, of whom some were owners, lessees, or occupiers of property, and some were traders, all being inhabitants and consumers :

Held, that objections taken to "the *locus standi* of owners, lessees, and occupiers of property" gave a sufficient description, and applied to the whole of the petitioners, the description contained in the endorsement of the petition being exactly followed in the objections.

Where the corporation of a borough petitions against a gas bill, and similar points are urged in a petition of inhabitants, the doctrine of representation will apply, and the *locus standi* of the inhabitants will be disallowed.

The bill was one "for incorporating the King's Lynn Gas company, and for enabling them to supply gas to King's Lynn and other places in Norfolk."

The petitioners alleged that "some of them are owners, lessees, or occupiers of property in the town of King's Lynn, and some are traders in the town, and some are included in both those descriptions," all being inhabitants and consumers; that the town and neighbourhood had hitherto been supplied with gas from private works, the property of Mr. Malam; that the gas thus supplied was inferior in quality, ill-regulated in its supply, of insufficient illuminating power, and sold at too high a rate; that by the bill it was proposed to form a company for the purpose of purchasing the works of Mr. Malam, and of supplying the town under statutory authority; and that the petitioners strongly objected to powers under which the present bad and insufficient supply of gas might be perpetuated, and efforts to remedy the same by the establishment of a local and independent company frustrated.

The endorsement and heading of the objections set forth that they were objections to the *locus standi* of "owners, lessees, and occupiers of property in the town of King's Lynn." They were as follow: (1) no lands, houses or other property of the petitioners are sought to be

entered upon, taken or used; (2) the petitioners are but 66 or thereabouts in number, and constitute but a small fraction of the population, which is 14,000 and upwards, and the petitioners are not entitled to be heard excepting through the Corporation, who are petitioners; (3) the petition is not signed by and does not emanate from any meeting of the inhabitants or ratepayers of King's Lynn held in opposition to the bill; (4) no ground of objection is disclosed which, according to practice, gives a right to be heard.

Pembroke Stephens (for petitioners): The promoters have objected only to the right of "owners, lessees, and occupiers of property" to be heard, not using the words "consumers of gas and traders." The *locus standi* of those of the petitioners who are consumers of gas and traders is not therefore practically objected to, and we have a right to be heard. The signatures distinguish those who are traders, and the Court will distinguish between particular persons signing a petition.

Mr. RICKARDS: The subscribers to the petition have described themselves as trademen, which is a different thing from traders, and they do not state whether they are consumers of gas or not. Are not the owners, lessees, and occupiers identical with them?

Denison, Q.C. (for promoters): So far as they are affected by the bill they must be. The promoters, in the heading to their notice of objection, have only followed the title at the back of the petition, that being endorsed "The petition of owners, lessees, and occupiers of property in the town of King's Lynn."

The REFEREES decided against the petitioners on the preliminary point raised by them.

Stephens: The bill is one brought in by Mr. Malam and others for the formation of a company for the purchase of his works, and the petitioners allege that the bill will perpetuate the present injurious monopoly enjoyed by Mr. Malam, and prejudice the interests of the petitioners and of the town generally. Though a petition has been presented against the bill by the Corporation, the petitioners claim an interest as consumers of gas distinct from the Corporation, and wish to be heard in that capacity for their own protection.

Denison: You do not in your petition allege that you have an interest distinct from the Corporation.

Stephens: The Corporation may obtain clauses which will not give the consumers the redress they seek.

The CHAIRMAN: What is the population of King's Lynn?

Denison: 16,000. And out of those the petition is only signed by 66. Not a single point can be urged by the petitioners which cannot be equally well urged by the Corporation.

The *locus standi* of the petitioners was Disallowed.

Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Cruise & Bigg.*

NORTHAMPTON CORPORATION MARKET AND FAIRS BILL.

4th March, 1870. —(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petitions of (1) RATEPAYERS of NORTHAMPTON; (2) FARMERS, GRAZERS, CATTLE DEALERS, &c.; (3) FREEMEN of the BOROUGH.

Markets and Fairs—Change of Site—New Tolls—Corporation—Farmers—Cattle Dealers—Rights of Pasture—Freemen of Borough—Representation—Majority of Ratepayers—Not heard against Corporation.

A bill was promoted by the Corporation of Northampton, empowering them to remove the market to another site within the borough, and to borrow money on the security of the borough fund for the purposes of the bill. Against the bill 3,711 out of 5,700 burgesses petitioned, urging that it had been hastily brought forward in the town council, since the last municipal election, and that the ratepayers had enjoyed no adequate opportunity of expressing their opinions respecting it. A meeting of ratepayers had, in fact, been called in December, and approved of the bill, but by a small majority:

Held, notwithstanding the fact that the petition was signed by a majority of the constituent body, that the ordinary rule of representation applied, and that the petitioners could not be heard against the Corporation.

A second petition against the bill was presented by 538 farmers, graziers, and others attending the markets, who complained that excessive tolls would be imposed, whereas the present market was free:

Held, that this petition was substantially analogous to that of traders and freighters against a railway bill for increasing tolls, and *locus standi* allowed accordingly.

A third petition was presented from a majority of freemen residing within the borough, who objected to the bill, inasmuch as it proposed to establish the new market on land over which they had rights of pasturage, substituting other pasture land at a distance less convenient for their use:

Held, that the petition disclosed grounds for a *locus standi* against the bill; and, treating it as a landowners' petition, the Court refused to limit the *locus standi*.

The bill was one promoted by the Corporation of Northampton, whom it empowered to provide in the borough new markets, fairs, and slaughter-

houses, and to close or remove wholly or in part the existing markets and fairs.

The ratepayers complained that power was taken to establish markets and fairs and slaughter-houses on any lands now or hereafter belonging to the Corporation, without designating those lands, so that the Corporation would be able to apply any lands belonging to them for that purpose, whatever the objections to such proposal; that power was taken to extinguish rights of common over certain lands, and transfer these to other lands; and power was also taken to borrow £50,000 for the purposes of the bill upon the security of the borough rates or borough fund, or upon any lands or property of the Corporation; that the petitioners as ratepayers were liable to the payment of rates upon the security of which money was to be thus borrowed; and the petitioners strongly objected to the grant of these powers, which would injuriously affect their interests; that the removal of the present market-place was not called for, and would be to the prejudice of the inhabitants and traders; that the site for the new market and fair as well as for the slaughter-houses was objectionable and impracticable; that the bill had been sanctioned by only a trifling majority of the town council without due and proper reflection, and without being considered by the ratepayers and inhabitants; that it was a hasty and ill-advised measure, and being of such vast importance to the borough required further consideration.

The petition of the farmers, graziers, cattle-dealers, and butchers, was signed by 538 persons, and asserted that the bill was promoted by the town council of Northampton, without due consideration and contrary to the desire of the petitioners, who formed a large portion of the cattle-dealers, farmers, graziers, butchers, and others, trading at the markets and fairs of Northampton, whose interests would be most injuriously affected by the bill; that power was taken to appropriate as a site for the new markets part of the Cow Meadow, situate at the extreme end of the most crowded thoroughfare in the borough, and at the farthest point from the principal grazing districts, and from the point at which the greatest number of stock entered the town; that a more unsuitable site for a market could not be selected; that the Corporation further proposed to levy general market and fair tolls, and to levy tolls and charges from persons selling or exposing for sale cattle or horses in any market or fair provided under the bill, and also tolls and charges for slaughter-houses to be so provided, and for weighing and measuring articles sold, which tolls and charges were excessive and unjust, and would injuriously affect the petitioners' interests.

The petitioning freemen (numbering 136 out of 231 resident freemen), alleged that they had valuable rights of pasturage over the portion of the Cow Meadow which the bill proposed to take, and these rights would thereby be extinguished; that a considerable number of the petitioners were owners of cows, and got their living principally by the sale of milk and butter; that others were small coal dealers and persons own-

ing one or two horses, which they used in their various trades; and the Cow Meadow being in close proximity to the borough of Northampton, the right to depasture their cows and horses there was essential to them; that the interests of the petitioners generally would by the appropriation of the Cow Meadow be very injuriously affected, and would not be compensated by the grant of right of pasturage over land at a greater distance from their residence.

The *locus standi* of the ratepayers was objected to because (1) the bill is promoted by the Corporation of Northampton, and is brought in by them under their common seal; and a meeting duly convened of ratepayers and inhabitants of the borough of Northampton was held on the 8th of December last, at which meeting a resolution was passed approving of the proceedings of the Corporation with regard to the bill; (2) the petitioners do not adequately represent the ratepayers of the borough; (3) they are constituent members of and represented by the Corporation, and are not entitled to be heard against the Corporation; (4) no property or rights of the petitioners are taken or affected; (5) no grounds are alleged on which, according to practice, they can be heard.

The *locus standi* of the farmers, graziers, and others was objected to because: (1) the petition does not allege that the petitioners are the inhabitants of any town or district injuriously affected by the bill; (2) no property of the petitioners will be or can be taken or affected; (3) the bill does not impose any rates or charges upon the petitioners, and the market and fair tolls authorised by the bill are not payable by the petitioners unless they make use of the markets, fairs, or other accommodations to be provided by the Corporation; (4) the petitioners have no such interest in the objects and provisions of the bill as entitles them to be heard against it.

The *locus standi* of the freemen of the borough was objected to because (1) the freemen of Northampton are a very numerous body, of which the petitioners form only a portion, and the petitioners do not allege or show that they represent, nor do they in fact represent, the freemen of the borough; (2) the bill is promoted by the Corporation of Northampton, who represent the interest of the ratepayers and inhabitants of the borough; (3) no grounds are alleged on which, according to practice, petitioners can be heard.

Pembroke Stephens (for all petitioners): The total number of burgesses on the burgess roll is 5,700, and the ratepayers' petition—which is signed by no person who is not a burgess as well as a ratepayer—is signed by 3,711 burgesses, a clear majority.

Rodwell, Q.C. (for the promoters): I am told there are 8,000 ratepayers in Northampton.

The CHAIRMAN: What constitutes the difference between a burgess and a ratepayer?

Stephens: To be a burgess, there must be occupation and rating for twelve months. In the lists making up the 8,000 there are a number of double entries, some persons being rated four or five times over in respect of different properties. Out of those 8,000 entries, only 5,700 are qualified to vote as burgesses in the election of the Town

Council, and as 3,711 have signed the petition, the ordinary doctrine of representation cannot apply here, seeing that there is a distinct repudiation of the bill and the act of the Corporation in promoting it, by a majority of the constituent body. This contention is supported by the fact that, though the Corporation were elected so recently as last November, the scheme for this bill was not then before the inhabitants of Northampton, and the Town Council were elected without reference to it. It is true that a meeting of inhabitants was held on the 8th of December, after the notices had appeared in print, and when the promoters were anxious to obtain the assent of the town to the bill; but so evenly balanced was opinion at that meeting, that it was a matter of doubt on which side the majority was; and so dissatisfied was the minority (if it was a minority) at the declaration by the Mayor that the resolution in favour of the bill had been carried, that this petition was adopted. The bill proposes to abolish the old fairs and markets, and to establish new ones, and to levy increased market tolls; and we say that the interests of the borough will be seriously affected by such provisions.

Mr. RICKARDS: The right of the petitioners to be heard is a question of principle rather than of merits.

The CHAIRMAN: We may assume that the ratepayers are divided in opinion. The question is whether the petitioning ratepayers can be heard against the Corporation which represents them?

Stephens: We say that for the purpose of introducing a bill they do not represent us. Until the last clause of the bill is passed, they have no power to appropriate a sixpence from the rates in promoting it; and they might be restrained by injunction from so applying the rates. Under such circumstances, the ratepayers having had no proper opportunity of expressing their opinions, the Court will surely give the majority of the constituent body an opportunity of urging the necessity for delay, so that next November they may make their opinion felt. The doctrine of representation cannot be pushed too far; there must be some limits to its application. Can there be a greater anomaly than to say, that after a municipal election at which this issue was not raised, a Corporation shall have power to introduce a bill of vital importance to the borough, interfering, as this does, with everybody's rights, and yet that a majority of their constituents shall not be heard against the bill? It may be said, "you will have the remedy in your own hands at the elections next November;" but that is no remedy at all, for by that time the bill may have passed, to our injury. In no reported case have a corporation promoting a bill been opposed by a majority of their constituents; in no reported case has the proportion of dissident ratepayers been anything like what it is here; this, therefore, may be taken as a fair and reasonable exception to the general doctrine of representation. Test it in this way. If an election took place in Northampton tomorrow, would the Corporation be allowed to go

on with the bill? If not, what becomes of the doctrine of representation? Under the special circumstances of this case, even if the petitioners were a minority of the burgesses, they would be entitled to a hearing; *a fortiori*, being an actual majority, they are entitled; and under S. O. 131 the Court has power to let them be heard. The farmers, graziers, and others attending the market, object to the bill because under it they will be subjected to heavy tolls, whereas the markets now are absolutely free. 538 persons have signed the petition, and among them are some of the principal buyers and sellers of stock in the neighbourhood. Whatever may be the merits of the case as between the Corporation and a majority of the ratepayers, these traders, being an entirely foreign body and having no voice in the election of the Corporation, cannot be shut out on any construction of the doctrine of representation; and considering that the Corporation are about to close the existing markets, to drive us compulsorily into new ones, and to make us pay excessive tolls in a market which before was free, our *locus standi* can hardly be doubted. Then, as to the freemen: the total number on the register at Northampton is 358. Of these 63 are dead, and 64 non-resident. Deducting these, we have 231, of whom 136 have signed the petition. The freemen are in the position of landowners who will be affected under the bill, and the promoters have practically admitted their right to be heard, having served each individual freeman with notice that his land is proposed to be taken. The land belongs to the Corporation, subject to the right of the freemen to depasture their cattle during certain months in the year.

Rodwell: The 8th clause in the bill enables the Corporation to agree with the trustees of the freemen's commons, elected by the parishes, for substituted rights of common.

Stephens: The clause will not apply to the Cow Meadow. Though the freemen elect trustees of another portion of land, 200 acres in extent, in a different part of the borough, held under a different title, there is no representative body with regard to the Cow Meadow. The freemen interested in that Meadow are individual freemen possessing individual rights. The Corporation propose, by clause 8, that land belonging to them at the other side of the town, should be transferred to the freemen's trustees in lieu of the Cow Meadow, which belongs to the freemen individually, and with which the trustees have nothing to do; and, as the petitioners allege, that substituted land would not replace the Cow Meadow, because it would be further from their places of business. The trustees, moreover, might impose a toll and put restrictions upon the use of that land—a power which they do not possess over the Cow Meadow.

Rodwell (in reply): As to the ratepayers, this case cannot be distinguished from those numerous cases where it has been decided that the constituents of a Corporation or municipal authority cannot be heard against a bill promoted by that Corporation or municipal authority.

The CHAIRMAN: You need not argue the case of the ratepayers further.

Rodwell: With regard to the farmers, graziers, butchers, and others, their interest is too remote to entitle them to be heard. If they can appear, so can the butchers of London. It is not compulsory on them to go to Northampton Market. They may go elsewhere. The fact is, this is a conflict between the interests of the shopkeepers and inhabitants of Northampton and people outside the borough. The number of cattle exposed for sale in Northampton so impedes the traffic of the streets that the inhabitants, to protect themselves, have brought in this bill, which really inflicts no hardship on the graziers and butchers.

The CHAIRMAN: Suppose there were no other market within a great number of miles?

Rodwell: They would still be able to carry on their business in other places besides markets. These people have no prescriptive right to attend the market. The control of the market is in the hands of the Corporation, and the graziers even now have to pay 500*l.* for the accommodation afforded to them.

Stephens: The markets are perfectly free, and the 500*l.* is only paid for penning the cattle in the streets.

Rodwell: That is in fact for turning the streets into a market. The Corporation have, at present, the power of making bye-laws and arrangements with respect to the exposure of cattle for sale in the streets, so as to render the inconvenience to the public as little as possible. In analogous cases, traders and freighters have been refused a *locus standi* against bills for the amalgamation of railways with canals, as having no vested interest and therefore no right to oppose.

Mr. RICKARDS: But traders and freighters have been allowed to appear against railway bills, proposing, for instance, an increase of tolls?

Rodwell: In some cases they have, and in others they have not.

Mr. RICKARDS: The question in such cases has always been whether the petitioners could be taken as representing the trade of the district.

Rodwell: The petitioners here cannot represent the trade of the district. They have no prescriptive right to come to Northampton to buy and sell. They only come on sufferance; and the people of Northampton now say, "Your coming here in this way has ceased to be a benefit to us; it is an injury to us; we will bring in this bill for the regulation of our own streets and markets; and you outsiders have no right to interfere." I admit that in some cases traders have been heard against a railway bill. But the case of a railway differs altogether from that of a corporation. A railway company is composed of individuals who trade for their own benefit, while corporations only make arrangements for the general benefit of a borough. It may reasonably be supposed that the Corporation here would not make such arrangements as would interfere with trade, but, on the contrary, that they would hold out inducements to persons to bring trade to Northampton.

The CHAIRMAN: In using the word "sufferance" do you contend that the Corporation could close the market to-morrow, and exclude the graziers and butchers?

Rodwell: They could clear the streets.

Stephens : The existing market is a chartered market, and the only right which the Corporation exercise in relation to it is to indicate the site.

Rodwell : The promoters do not wish that the graziers and butchers shall be excluded from coming, but that they shall come under new regulations.

Stephens : The Corporation are closing the existing market and establishing a new one, into which the petitioners are to be driven, and for the use of which tolls will be levied.

Rodwell : Perhaps in using the word "sufferance" I have used too broad a term, but the Corporation at present have the power to regulate the hour at which cattle shall arrive, the time they shall remain, and the hour at which they shall leave the town ; and the bill only enables the Corporation to make further regulations.

MR. RICKARDS : These petitioners will be toll-payers, and claim the right to be heard in the same way as freighters who use a particular railway are allowed to be heard against a bill proposing to raise the fares.

Rodwell : But there is a distinction between the case of a corporation, asking for powers to make bye-laws and regulations for the good government of their own town, and the case of a company coming for a bill to take tolls for the profit of their own shareholders. It may be right where one trader is endeavouring to exact higher tolls from another trader that the latter should be heard ; but the Corporation here are doing this not for their own profit, but simply for the benefit of the public. Municipal authorities who put the law in motion ought not to be harassed by outsiders.

MR. RICKARDS : The Corporation may be quite right in coming for a bill to carry out what they think would be for the interest of the borough. Other parties, however, who carry on trade within the borough, claim to be heard to say that the regulations proposed, while very good for the borough, would be unfair to them. The question is whether the Corporation are at liberty to sacrifice a portion of the outside public, and to prevent at the same time their being heard ?

Rodwell : I contend that outsiders are not entitled to be heard, because it may be assumed that the municipal authority, in making new regulations, would have regard to the interests of the borough, which are mixed up with those of outsiders. A corporation would never adopt so suicidal a policy as to drive away the trade of the town. In the *Sunderland Extension and Improvement Bill*, 1867, (Cliff. & Steph. 59) the *locus standi* of the petitioners, who objected to the removal of the fair, was disallowed.

MR. RICKARDS : But they were not traders ; they were persons having premises which they thought would be injured by the removal of the fair.

Rodwell : With respect to the freemen, though the Court has dealt with the question of manorial rights, the case of commoners is a new one. I submit that the petitioners here are represented by the freemen's trustees.

Stephens : The trustees have nothing whatever to do with the Cow Meadow, which is to

be taken compulsorily. The freemen's trustees only have to do with land in another part of the town, which is to be substituted for the Cow Meadow. If this fact be disputed, I will call the Clerk to the Trustees.

[Mr John Jeffrey was accordingly called, and stated that he was clerk to the freemen's trustees, who were a body acting under an Enclosure Act of 1707. The lands in respect of which they were appointed did not include the Cow Meadow, which was distinct from the lands over which the freemen's trustees had jurisdiction. There were no trustees of the Cow Meadow: the Corporation managed it entirely themselves. With respect to the land under the management of the trustees, the trustees could fix any stint and any price: but upon Cow Meadow the price was absolutely fixed at 6s. for a horse and 5s. for a cow ; six head of cattle being allowed to each freeman.]

Rodwell : A corporation coming to Parliament to carry out a local improvement should not be harassed by unnecessary opposition. Therefore if the freemen are allowed a *locus standi* it should be limited to the taking of compulsory powers over their land.

Stephens : If they are let in at all it must be as landowners, who would therefore have a general *locus standi*.

Rodwell : But you do not stand in the position of ordinary landowners.

By the COURT: The *locus standi* of the Rate-payers is *Disallowed* ; of the Farmers, &c., is *Allowed* ; and of the Freemen is also *Allowed*.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Holmes, Anton, Greig, and White.*

SHIPLEY GAS BILL.

4th March 1870.—(Before Mr. DODSON, M.P.: Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of TITUS SALT & Co., and JOSEPH HARGREAVES.

Practice—Gas Bill—*Opposition by Individual Consumers*—*Injury as Ratepayers*—*Absence of Allegation*—*Representation.*

A bill promoted by an existing Gas Company, for extending their limits of supply, and raising further capital, was opposed by two firms of manufacturers. One of these made its own gas, but the petition alleged that three members of the firm resided within the Company's district, and were customers of the Company ; and in argument it was further urged, though on this point the petition was silent, that the firms were very large ratepayers, and would suffer in that capacity through the increased cost of public lighting, which would be caused by the

bill. The second firm consumed the gas of the Company, but did not allege any special injury resulting from the bill.

Held, that in neither case had the petitioners any *locus standi*, though the two firms together employed 4400 workpeople, the population of Shipley being 7100.

This was a bill "to extend the limits and increase the capital of the Shipley Gas Light Company, and for other purposes."

The petition was signed by Titus Salt, Sons & Co., and Joseph Hargreaves. It appeared, however, that there was now no such person in existence as Joseph Hargreaves, though that was the name in which the business was carried on. The petitioners alleged that they were extensive manufacturers, and owners and occupiers of valuable works in Shipley and the neighbourhood, employing upwards of 4400 workpeople. They stated that the works of Titus Salt, Sons & Co. were at present lighted by means of private gasworks of their own; but three of the members of that firm, namely, Edward Salt, Titus Salt, the younger, and Charles Stead, resided within the company's district, and were customers of the company; that the works of the petitioner Joseph Hargreaves, as well as the residences of each of the members of that firm, were within the company's district, and lighted by the company's gas; that it was not expedient, and would not be advantageous to Shipley and the district now supplied by the company, that the limits of the company's existing Act should be extended as proposed by the bill; that any such extension would involve the company in expenses which would in fact have to be paid for by the consumers within the present district; that the proposed increase of capital was excessive and the proposed dividend in respect of such capital too high; that provision should be made in the bill, requiring the company, on the requisition of the local board of health for Shipley, to transfer the gasworks to that local board; and that if the gasworks were in the hands of the local board, it would be for the interest of Shipley, and tend to the lowering of the charge for gas. In conclusion, they alleged that the bill would injuriously affect their rights and interests.

The *locus standi* of the petitioners was objected to, because (1) Messrs. Titus Salt, Sons & Co. were not consumers of gas supplied by the promoters, but on the contrary were supplied by private gasworks of their own with which the bill did not interfere; and they had no interest whatever in the undertaking or affairs of the promoters; (2) Messrs. Edward Salt, Titus Salt, the younger, and Charles Stead, respectively alleged to be members of the firm of Titus Salt, Sons & Co., had not signed the petition and were not entitled to be heard, with respect to individual complaints, upon the signature of their firm; and similar objections applied to the members (in their private capacity) of the firm of Joseph Hargreaves; (3) the petitioners, or some of them, were only individual consumers of gas supplied by the promoters, while

the grounds of objection alleged in the petition were not specially applicable to individual cases but were general and such as could only give a right to be heard to parties entitled, in accordance with practice, to represent the interests of the class alleged to be injuriously affected; (4) the petitioners had no sufficient interest, and did not allege any special grounds entitling them to be heard.

Clerk, Q.C. (for petitioners): The two firms, who join in this petition, represent the greater part of the interest in Shipley. They employ 4400 hands, while the population of Shipley by the last census is 7100.

The CHAIRMAN: Messrs. Titus Salt, Sons & Co. seem to put themselves out of Court by their statement that their works are at present lighted by means of private gasworks of their own, but that three of the members of the firm reside within the company's district, and are consumers of the company.

Clerk: It is quite true that the works of Messrs. Titus Salt are lighted entirely by gas manufactured at their own gasworks, which supply also the houses of persons in their employment. But though Messrs. Titus Salt do not pay the company anything in respect of the gas consumed either in their own works or in the houses of their workpeople, they contribute very largely to the expense of lighting the district, because they pay more than one-third of the rates of Shipley.

Richards, Q.C. (for promoters): I object to your going into matters not contained in the petition.

Clerk: Inasmuch as Messrs. Titus Salt & Co. supply themselves with gas, I have nothing to say to the provisions of the bill for extending the limits of supply; but we object to the bill as ratepayers, on the ground that the expense of the public lighting (in which Messrs. Titus Salt are very much interested, they paying so large a proportion of the rates) will be very much increased under the bill.

Mr. RICKARDS: Messrs. Salt admit, that as a company, they are not consumers, and they do not allege that they are ratepayers?

Clerk: No; but it is to be inferred from the petition that they are ratepayers, for they state that they are occupiers of these large works, and employ several thousand people, who occupy 800 houses belonging to the firm, the whole of the rates being paid by Titus Salt & Co. themselves. With respect to Messrs. Hargreaves (the other firm who have signed the petition) they consume the gas of the company, and pay a very large rental for it; and they also employ a great number of people, who reside in houses belonging to the firm, the rates of which houses Messrs. Hargreaves pay.

Richards: I object again to the statement of facts not in the petition.

Clerk: The petition has been drawn up in a hurry, and several important facts have been omitted which I am entitled to state. As to the objection that a single consumer cannot be heard, I submit that a large consumer will be as much entitled to be heard as fifty small consumers. The case is not like that of a single trader who is not allowed to appear against a

railway bill, because, when he comes before the committee, he may make a special bargain for himself. The name "Joseph Hargreaves" is a *nomen collectivum*, representing not only the firm themselves, but the workpeople employed by them who consume gas, and who will be affected by the provisions of the bill.

The REFEREES informed Mr. Richards that he need only reply to the case of Messrs. Hargreaves.

Richards: Though the petition alleges "That the works of your petitioner Joseph Hargreaves, as well as the residences of each of the members of that firm, are within the Company's district and lighted by the Company's gas," and though the petition is signed "Joseph Hargreaves," there is no such person. The petition ought to have stated that there are certain individuals trading under the name of Joseph Hargreaves, and those individuals so trading should have signed the petition; but apart from that objection, Messrs. Hargreaves, whether they are large consumers or small consumers, have no more right to appear than any single consumer of gas or ratepayer in Shipley. As to the large number of workpeople said to be employed by Messrs. Hargreaves, none of these people have petitioned. The petition alleges that it will be for the interest of Shipley that the gasworks should be in the hands of the local board; but the local board do not appear to think so, for they are not petitioners against the bill. The objections raised in the petition are objections which properly ought to be urged by a class, and not by an individual.

The *locus standi* of the petitioners was *Disallowed*.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

EAST LONDON RAILWAY BILL.

7th March, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petitions of (1) LONDON, CHATHAM, AND DOVER RAILWAY Co.; (2) MIDLAND RAILWAY Co.; (3) SURREY COMMERCIAL DOCK Co.

Railway Companies—Working Agreement—Competition—Interchange of Traffic—Equal Facilities—Dock Company—Agreement to Construct Works—Power to Enforce—Saving Clause.

The East London railway company promoted a bill under which the Brighton company agreed to work the line for a term of years, with power to admit the South Eastern and Great Eastern railway companies as parties to such agreement. Against this bill the Chatham and Dover, and the Midland railway companies petitioned, on the ground that they competed, the former with the Brighton and South Eastern, and the

latter with the Great Eastern lines, and ought to be heard to claim the same facilities:

Held, that the petitioners were entitled to a *locus standi*, but in the case of the Midland company limited to the agreement clause.

A Dock company which had entered into agreements with the East London company for the construction of works, and the grant of facilities by that company, urged that its statutory securities were weakened by the bill; and that though there was a clause saving the rights and remedies of the petitioners, the East London company, by giving up the control of its line to another company, deprived itself of the power specifically to fulfil its engagements:

Held, that the petitioners had no *locus standi*.

The object of the bill (*inter alia*) was to confirm an agreement contained in the schedule, and made between the East London and the London and Brighton railway companies, providing for the working of the East London line by the Brighton company for a period of twenty-one years, and then for a renewal of the agreement, at the option of the Brighton company, at the end of every five years. The agreement contained provisions as to fares, and the mode in which receipts were to be divided; it set forth that the Brighton company should provide the engines, carriages, trucks, and other rolling stock necessary for working the line. Clauses 11 and 12 were as follow:—"The East London company shall not oppose any reasonable arrangement which the Brighton company may desire to make for the purpose of admitting the South Eastern railway company to participate with the Brighton company in the agreement hereby made. Nor shall the East London company oppose any reasonable arrangement which the Brighton company may desire to make, either solely or in conjunction with the South Eastern railway company, for the purpose of admitting the Great Eastern railway company to participate with the Brighton and South Eastern companies, or the Brighton company alone, in the agreement hereby made."

The London, Chatham, and Dover railway company alleged in their petition, that their railway communicated with that of the Brighton company, over portions of which, including that part of the Brighton line communicating with the East London railway, the petitioners had running powers; that the East London railway formed the link of communication on the eastern side of the metropolis between the railway systems on the north and south side of the Thames, and in the interest not only of the railway companies but of the public, it was indispensable that this line of communication should be open, and available on equitable terms, not only to the Brighton and South Eastern companies, but also to the petitioners, who were largely interested in traffic passing between the Continent and places south

of the Thames, and towns and places on the north of the Thames; that for much of this traffic the Brighton and South Eastern companies competed with the petitioners, who had every reason to apprehend, that if the East London line were placed, as proposed by the bill, in the hands of the Brighton company, either alone or conjointly with the South Eastern, the traffic which the petitioners would be able to secure, if they were in a position to avail themselves of the East London railway, would be diverted from them, and the public would thereby be deprived of the advantage of the choice of routes which they would otherwise enjoy; and finally they submitted, that if the preamble were sanctioned, provisions should be inserted in the bill enabling the petitioners to run over the East London line with their engines and carriages, or otherwise securing them against the control of that line being used to obstruct their traffic and prejudice the free communication by way of the East London railway between the Chatham line and the railways north of the Thames.

The petition of the Midland railway company alleged that in the *Great Eastern* bill, now pending (*post*, p. 14), an agreement was scheduled containing provisions under which the East London and Great Eastern railway companies might be more conveniently connected with each other, and the lines of the two companies more conveniently used for the accommodation and transmission of Great Eastern traffic over the East London line to and from the Brighton and South Eastern and other railways south of the Thames; and this agreement contained clauses preventing the East London company from making through booking arrangements with other companies without the consent of the Great Eastern, and entitling that company, on giving six months' notice, to run over and use the East London for the purpose of interchanging traffic with the railway companies south of the Thames; that the construction of the East London railway was sanctioned by Parliament to afford an increase of accommodation between the railways north of the Thames and those south of the Thames: that the petitioners were owners of more than 800 miles of railway north of the Thames, and were entitled to use the Great Eastern lines to the point of junction with the East London, and were in a condition to exchange traffic with the Brighton, the South Eastern, and other companies south of the Thames, by means of the East London; that the public objects to secure which the East London line was sanctioned by Parliament would be defeated unless the East London railway were as open to the petitioners as to the Great Eastern for the interchange of traffic with the southern railways, and unless equal facilities and the like accommodation were afforded to each company; that if the powers sought to be conferred on the Great Eastern were sanctioned, that company would acquire an undue advantage over the petitioners in the conveyance and interchange of traffic with the southern railways; and the petitioners submitted that these powers ought not to be sanctioned unless the like were conferred on them.

The Surrey Commercial Dock company

alleged that they were incorporated in 1864, and were owners of the Surrey Commercial docks and of the Grand Surrey canal; that they had expended upon their undertaking a sum of more than 1,300,000*l.*; that the traffic of the docks and canal was great and increasing, good railway accommodation being of the highest importance to the petitioners; that the East London company, in promoting their original Act, sought power to take or interfere with part of the dock and canal premises in a very objectionable manner; but the petitioners refrained from opposing the bill, the promoters agreeing to insert clauses for the petitioners' protection, to construct a station with a siding, maintain this station, and give the petitioners all proper and reasonable facilities for the transmission of goods between their property and Railway No. 1, described in the Act; that the East London company had not yet constructed a considerable portion of the works, which, under their original and subsequent Acts, and agreements with the petitioners, they were bound at their own cost to execute and maintain; that in the company's original Act special remedies were given to the petitioners, in the event of interference with, or injury to, the works and property of the petitioners, or the traffic on the canal; that the petitioners were alarmed at the proposals in the bill under which the Brighton company would become practically the owners of the company's lines, and the petitioners apprehended that the East London company might be rendered physically incapable of performing their obligations and liabilities to them, no provision being contained in the bill that the Brighton company should be subject to and perform all these obligations, and be liable to the same penalties for non-performance; that it was doubtful whether the Brighton company would feel as much interest in affording facilities for the transmission of the traffic to and from the petitioners' docks as the East London company working their own line would feel; that the Brighton company should for these reasons be placed under special enactments to forward effectually and speedily all traffic to and from the petitioners' docks over the East London railway, and from and to the railway systems in connection therewith, upon terms as favourable as those conceded to any other company or person.

The *locus standi* of the London, Chatham, and Dover railway company was objected to because (1) neither the powers given by the bill to the Brighton company, nor the provisional agreement with that company affect the rights and interests of the petitioners so as entitle them to be heard; (2) the rights and interests of the petitioners are not prejudicially affected in any manner whatever, or not in such a manner as to entitle them to be heard; (3) no case of competition or interference with competition is shown; (4) the petitioners cannot be heard according to practice.

The *locus standi* of the Midland railway company was objected to, because (1) the bill will not materially, or to any extent whatever, affect any property, right, or interest of the petitioners; (2) they are not affected by the power

sought to be conferred on the Great Eastern railway company, or, at all events, not so as to entitle them to be heard; (3) the bill would not prevent the East London railway from being as open to the petitioners as to any other railway company; (4) the petition does not disclose any case of competition which entitles the petitioners to be heard; (5) they cannot be heard according to practice.

The *locus standi* of the Surrey Commercial dock company was objected to, because (1) no property, rights, or privileges of the petitioners are taken or interfered with; (2) none of the clauses for their protection, or the agreements made between them and the promoters are repealed, varied, or otherwise altered; (3) the agreement between the promoters and the Brighton company, and its confirmation by the bill, do not affect the rights, interests, or remedies of the petitioners, or, at all events, not so as to entitle them to be heard; (4) they cannot be heard according to practice.

Round (for Chatham and Dover company): The agreement scheduled to the bill is tantamount to a perpetual agreement between the East London and Brighton companies. From the year 1860 to 1866, the Brighton and the Chatham companies continually met in Parliament for the purpose of promoting or opposing rival schemes, more particularly with a view to accommodate the southern suburbs of London. The result is a complete system of railways forming the southern outer circle, in part owned by the Brighton, and in part by the Chatham company. An active competition exists between the two lines, not only for suburban but for Continental traffic. There is also an active competition between the Chatham and the South Eastern companies. The class of people who go to Ramsgate and Margate are contributed in a large proportion from the suburbs of London, and it is obvious that if any one company is able to command this traffic as against the other, it is immediately placed in an exceptionally advantageous position. Now by virtue of this agreement, the Brighton company will be able to take the traffic on the north of the Thames, and bring it over the East London as if it were their own line; and having done so, they may take it over their system in opposition to ours. As to the South Eastern company, their competition will be still more important to us, because they compete with us at more points than the Brighton company do. The agreement contains a distinct power for the Brighton company, who will be, in effect, the owners of the East London line, to admit the South Eastern to participate with them in the agreement. Thus the Brighton and the South Eastern companies, both rivals of ours, will monopolise the use of this line of rails, practically interposing a bar for all time against our traffic. These two companies will take into their own hands this important link, for the purpose of developing their traffic at our expense; they are to shut the door of the East London against us, and enjoy advantages denied to us. Surely we should have the power of telling Parliament that either no other company should enter into such an agreement, or that

we should share the same advantages (Cliff. & Steph. *Practice*, 69—70).

Venables, Q. C. (for Midland railway company): The Midland company are at the terminus of the East London, and are therefore in a position to exchange traffic, by way of the East London, with all the southern companies; but the agreement scheduled to the *Great Eastern Bill* (the next bill for consideration by the Referees) contains the following clause: "Such user of the single or double line (as the case may be), and the East London accommodation to be provided at the station, to be for East London traffic proper. Through booking with other companies to be with the consent of the Great Eastern." So that there is in the *Great Eastern Bill* an express provision that the East London shall not book with the Midland, for instance, except with the consent of the Great Eastern. With regard to the present bill, the Midland company ask to be heard against Clause 8 (empowering the East London and the Great Eastern companies to enter into agreements). It is a matter of great importance to us to have a free passage over the East London to various parts of the southern counties; and being at the terminus of the East London, we are ready to send traffic by that route. We therefore claim to go before the Committee and ask to be empowered to make agreements with the East London for sending our traffic on as favourable terms as those given to any other company. The traffic which the Midland would send by the East London, or the greater part of it, would be competitive traffic with that of the Great Eastern. If, therefore, the Great Eastern alone can make agreements with the promoters, we shall be practically excluded from the East London.

Pember (for Surrey Commercial dock company): We have a statutory right to demand from the East London the construction and maintenance of certain works, and the specific performance of certain agreements; but the East London company now propose to part practically with the management of their railway, and place it in the hands of people who will not be responsible to us for the performance of any one of these engagements. The agreement scheduled to the bill provides that—"The Brighton company shall be at liberty to exercise all the powers of the East London company in regard to the working of the railways, and the East London company shall alone be responsible for the performance of all the obligations of the East London company, whether under Act of Parliament or otherwise, other than such obligations as are by this agreement undertaken by the Brighton company." As the agreements between my clients and the East London company were not taken over by the Brighton company, we can obtain no remedy against them, and no satisfactory remedy against the East London company. Under the agreement of May, 1866, the East London company, "their successors or assigns," are bound to construct the works and grant the facilities therein mentioned. Technically, this covenant gives us a *locus standi* against a proposal which constitutes the Brighton company the assigns of the East London. And, substan-

tially, my argument is, not that under the agreement scheduled to the bill the East London will be relieved of liability to us, but that we shall only have a bare covenant on their part, they having parted with the physical power to carry out their contract. To a suit for specific performance, the answer would be that Parliament, in sanctioning this bill, and handing over the East London line to the Brighton company, had rendered it impossible for the East London company to perform its engagements; and pecuniary damages would not meet our case. The Great Eastern company are connected with the Victoria dock company, who are rivals of ours; and it may be worth the while of the Brighton company, in working this line, to hamper our traffic, and play into the hands of the Great Eastern. The Referees have, indeed, held that where one company has facilities over another railway, that company has no *locus standi* against a bill for giving similar facilities to some other company. But this is not an analogous case. There the *locus standi* is disallowed because the petitioning company is left by the bill in the same position as before, its rights not being impaired by the facilities given to a third company. Here we do not object to a mere working agreement, but the bill proposes to hand over the East London to the Brighton company, who will not really be responsible to us as the East London company is. Though the agreement is saved by the bill, we shall only have a nominal remedy under it, whereas now we have a substantial remedy.

Ledgard (for promoters): The East London bill was before Parliament in 1864 and again in 1865; and if the Midland and Chatham companies wished for such facilities as they now seek, they ought to have asked for them at the time. Parliament did not insert in the East London bill any such powers, but left us open to make any arrangements we thought fit with other railways. This is an attempt by a side wind to obtain facilities to which the Midland and Chatham companies are not entitled. Any injury to the existing interests of either company ought to be clearly proved, but no such injury has been shown, nor will a single right which the Chatham company now possess be taken away by the bill. As to any probable competition between the South Eastern and the Chatham companies, no new competition is established; but if it be, it is only a development of existing competition, and this does not entitle the petitioners to be heard. As to the Dock company, their remedy at law will remain as before; and in no case have the Referees given a *locus standi* where the party claiming it had a remedy at law. Every right possessed by the Dock company is reserved by Clause 7 of the bill, which provides that "nothing in this Act contained shall alter, or in any respect prejudice or affect any agreement between the companies and the Surrey Commercial dock company entered into before the passing of this Act." The argument used against the admission of the Chatham company applies with greater force to the Midland company. Because it may be desirable to give to the Great Eastern certain facilities, the Midland are not

entitled to claim the same facilities. Moreover, the petitioners are wrong in supposing that, under the agreement scheduled to the *Great Eastern Bill*, no through booking arrangements can be made between the East London and any other company without the consent of the Great Eastern. The clause quoted merely refers to the user of the single line, or the conjoint user of two lines, which the Great Eastern are to provide for the East London company. Excepting that single half-mile of rail, the bill does not prevent any through booking arrangements with the Midland. The communication with the southern lines will be as open to the Midland after the bill is passed as now. At all events, the Midland have not shown any such case of competition as entitles them to be heard. If there is any probable competition hereafter, it is, as in the case of the Chatham company, simply a development of competition already existing.

The *locus standi* of the London, Chatham, and Dover company was *Allowed*.

And (after arguments in the *Great Eastern Bill* had been also heard) the *locus standi* of the Midland company was *Allowed* against Section 8 (agreements) and so much of the preamble as related thereto.

The *locus standi* of the Surrey docks company was *Disallowed*.

Agents for the Bill, *Sherwood & Co.*

Agents for the London, Chatham, and Dover railway company, *Martin & Leslie*.

Agents for the Midland railway company, *Dyson & Co.*

Agent for the Surrey Commercial dock company, *Newall*.

GREAT EASTERN RAILWAY (METROPOLITAN RAILWAYS, &c.) BILL.

7th March, 1870. — (Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petitions of (1) the RECTOR, CHURCHWARDENS, and INHABITANTS OF ST. BOTOLPH, BISHOPSGATE; (2) JAMES HARMAN; (3) LONDON AND NORTH WESTERN; (4) MIDLAND RAILWAY COMPANIES.

Practice—Vestry Meeting—Signature of Petition by Rector and Churchwardens—Insufficiency of.

A petition was presented against a railway bill, purporting to be the petition of "the Rector, Churchwardens, and Inhabitants" of a parish "in vestry assembled," but only signed by the Rector and Churchwardens, who did not allege that they petitioned by the order or authority of the vestry. It was objected that, in the absence of any such allegation, the petition could not be admitted as proceeding from the vestry:

Held, that the *locus standi* of the petitioners must be disallowed, although a meeting of the vestry had been held, at which a committee of five, including the rector and churchwardens, was appointed, "if necessary, to present a petition against the bill." No special notice had been given that the bill would be considered at this meeting.

This was "a bill for making alterations in the authorized metropolitan railways of the Great Eastern railway company, and for extending the time for the completion thereof, and for conferring upon the company and upon certain other companies other powers in connection with the said railways and for other purposes."

The petition purported to be "the humble petition of the Rector, Churchwardens, and Inhabitants of the parish of St. Botolph Within, Bishopsgate, in the City of London, in vestry assembled," and was signed by the rector and churchwardens, but there was no allegation that they signed by order of the vestry. As the *locus standi* of the petitioners was refused upon a technical objection, it is not necessary to set forth the allegations in their petition.

The objections to their *locus standi* were as follow: (1) the petition is signed by the rector and churchwardens, but it is not alleged in the petition that the signatures were attached by the order of any vestry meeting, and in the absence of any such allegation the petition, in conformity with the practice of Parliament, can only be admitted as the petition of the rector and churchwardens; (2) the bill gives no power to take any land or property belonging to the vestry or to the rector or churchwardens, collectively or individually; (3) the control of the public streets and thoroughfares in the parish of St. Botolph is not vested in the vestry or in the rector or churchwardens collectively or individually, but the same is vested in the Commissioners of Sewers of the City of London, or in the Corporation of London, both of whom have petitioned against the bill; (4) the matter complained of in the allegation with respect to superfluous lands does not affect the vestry or the rector or churchwardens as such, and they have not such an interest in the matter as entitles them to be heard upon that allegation; (5) all the other allegations relate to interference with the public streets, or inconveniences arising therefrom, matters which properly appertain to those who have the control of the streets, and in which the petitioners have not such an interest as entitles them to be heard.

Paine (Parliamentary agent, for petitioners): It is true the petition is signed by the rector and churchwardens only, and that it has been held that the signature of a chairman of a public meeting on behalf of the meeting is only the signature of the chairman himself; but in that case the meeting was not a legally constituted body like a vestry. In the *Thames and Severn Bill*, 1866 (Smeth. 96) the *locus standi* of the Navigation Board was disallowed because the petition was not signed by the requisite quorum of commissioners, the quorum there being defined by the

Act. Here the vestry consists of the rector and churchwardens, and any of the inhabitants who choose to attend. The rector and churchwardens in fact constitute the vestry, if no one else attends. There being no corporate seal, the only signatures apparently which can be affixed are those of the rector and churchwardens; and it is sufficient if I satisfy the Court that the direction to prepare and present the petition was given by the vestry, which I am prepared to prove through the vestry clerk.

Mr. RICKARDS: The petition on the face of it appears to be the petition of three persons.

Paine: Though it is so signed, it is headed "the Petition of the Rector, Churchwardens, and Inhabitants, in vestry assembled."

[*Mr. Alfred Henry Clapham*, vestry clerk, was examined, and said he apprehended that the rector and the two churchwardens constituted a vestry if no one else was present: no quorum was required. It generally happened, however, that at the vestry meetings in this parish more than a hundred ratepayers attended. At this meeting between 50 and 100 persons were present. The vestry was summoned by a notice signed by the rector, the Rev. William Rogers, and the churchwardens (notice produced).]

The CHAIRMAN: This is to make a church-rate, and to make a rate pursuant to Act of Parliament, under the 35th of Geo. III., and for other purposes. There is not a word about petitioning against the Great Eastern railway bill.

Witness: No; a great many things are done at the vestry beyond those of which notice is given, and it has never been considered that anything done at the vestry not inserted in the notice is illegal. It is impossible for us to specify what may be brought before the vestry, because every inhabitant has a perfect right to attend and to propose any motion, and if the majority carry it, I imagine that is so far binding. At the meeting held pursuant to this notice a resolution was passed to appoint a committee for the express purpose of drawing up and presenting a petition against this bill, and the committee adopted this petition, which was presented as the act of the vestry. The committee was a committee of five persons, who were present at the meeting. The resolution empowered the committee "to take such steps as may be deemed desirable, and if necessary to present a petition against the bill on behalf of the rector and churchwardens and inhabitants." The rector and churchwardens were *ex officio* members of the committee. I could have got a great number of signatures, but I thought it inconvenient to have a great number. Are we to attach the signatures of one, or two, or of all the ratepayers? I do not know where we are to stop, unless we simply attach the signatures of the rector and churchwardens, who represent the parish and are a corporation.

Paine: Has it been the practice of the rector and churchwardens invariably to sign petitions in this way on behalf of the vestry?

Witness: Yes; petitions against the proposals of this very company, and we never had our *locus standi* contested before. In 1865 we presented a petition.]

Round (for promoters): There is a petition

from the Corporation, and also from the Commissioners of Sewers.

Mr. RICKARDS: The general rule of the House is that a petition signed by an individual is the petition of an individual.

The *locus standi* of the petitioners was *Disallowed*.

Agents for the Rector, &c., of St. Botolph, *Paine & Layton*.

(2) Petition of JAMES HARMAN.

Practice—Sufficiency of Allegations—by Landowner—Injury to—Extension of Time—Deviation—Notice.

A petitioner against a railway bill had received notice from the promoters that two of his houses were within the limits of deviation. His petition contained a general allegation that lands of his were affected by such deviation, but not that they might actually be taken:

Held, that the petition could not be properly objected to as insufficient, and *locus standi* allowed.

The petition of James Harman alleged generally (*inter alia*), that his lands were affected by the deviation proposed in the bill, and that the proposed extension of time for the construction of portion of the authorised line would, if sanctioned, result in hardship and pecuniary loss to him, he having laid out land for building, and sold portions of the land to the Railway Company on the faith of the completion of the line within the time limited in the existing Act; however, in the event of this time being extended, as proposed, he would be unable to let, build upon, or otherwise deal with any further part of his property and lands; and owing to the uncertainty existing as to the precise course the railway would take across his land, he had been unable to get persons to rent his houses.

The *locus standi* of the petitioner was objected to on the following grounds: (1) the petitioner does not allege that any land or property belonging to him is or can be taken under the bill, or that any of his rights or privileges will be interfered with by the bill; (2) the lands to which special reference is made in the petition as lands formerly belonging to the petitioner but sold to the promoters are bought and paid for by them, and the petitioner cannot in respect of those lands claim any right to be heard; (3) the alleged injury to his property is not of such a character as entitles him to be heard consistently with

practice; (4) the petitioner has no sufficient interest in the subject-matter of the bill.

Shireen Will (for petitioner): Apart from his other grounds of *locus standi*, the petitioner has received notice from the promoters that the proposed deviation will include two of his houses.

Round (for promoters): There is no allegation in the petition that his land will be taken.

Will: The statement in the petition is not so distinct as it would have been if we could have foreseen that this technical objection would be raised; but if the substance is there, particular words will not be needed, and we say expressly that our land will be affected by the deviation. That allegation cannot have reference to land which has been already taken, and for which compensation has been assessed; it must refer to land which is proposed to be taken. S. O. 126 empowers the committee on the bill to make the petition more specific.

CHAIRMAN: We will hear the promoters as to the notice.

Round: We will concede the *locus standi* of Mr. Harman.

Locus standi Allowed.

Agent for Mr. Harman, *Walmisley*.

(3) Petitions of LONDON AND NORTH-WESTERN RAILWAY COMPANY; and (4) MIDLAND RAILWAY COMPANY.

Railway—Junction—Temporary Obstruction—Levels—Through Booking—Apprehended Monopoly—Running Powers.

The Great Eastern company sought for powers (*inter alia*) to construct a short junction railway to the Metropolitan line; and to confirm an agreement with the East London railway, whereby through booking arrangements between that company and other railway companies over the junction were only to be entered into with the consent of the Great Eastern. This restriction was opposed by the North Western and the Midland companies, the former also urging that in the construction of the junction a temporary obstruction would be occasioned to their line and station, and that the junction would be carried underground instead of on arches as originally proposed. The North Western had received notice as occupiers, but did not allege in their petition that they were entitled to appear on this ground:

Held, that both companies had a limited *locus standi* against the agreement scheduled to the bill.

The petition of the London and North Western railway company alleged that the bill proposed

to empower the Great Eastern railway company to construct a short junction railway from the No. 1 line authorised by "the Great Eastern Railway (Metropolitan Station and Railways) Act, 1864," to the line of the Metropolitan railway company authorised by their Tower Hill Extension Act, 1864, at Liverpool Street in the City of London, which last mentioned line had not yet been commenced; that the petitioners were the owners of a large passenger and goods station at Broad Street, where there was a heavy traffic which would be materially interfered with and impeded during the construction of the intended railway; that the approach to the petitioners' station from Liverpool Street would be thereby obstructed, and they would sustain considerable loss and the public be greatly inconvenienced in their access to and egress from the petitioners' station, and be debarred from using the petitioners' City branch railway to Broad Street; that there was no public or other necessity to justify the construction of such intended railway, its object being to make a communication between the railway of the promoters and the authorised line of the Metropolitan railway on a low level, according to a scheme different from that already sanctioned by Parliament, which would accordingly be prejudicial to the interests of the petitioners and the public; and that it was also sought (by sec. 25) to confirm an agreement between the East London railway company and the promoters, scheduled to the bill, by the terms of which agreement the petitioners would be prejudicially affected.

The petition of the Midland railway company alleged that the construction of the East London line was sanctioned by Parliament to afford communication in the eastern part of the metropolis between railways north of the Thames and railways south of the Thames; that the petitioners were in a position to exchange traffic with the Brighton railway and the South Eastern railway and other railways south of the Thames; that such interchange of traffic was carried on by means of facilities accorded by one company to another, a system of through booking being universally adopted and absolutely necessary to enable such traffic to be conducted with convenience to the public and advantage to the companies north and south of the Thames; that by the seventh article of the agreement scheduled to the bill it was proposed to restrict the East London company from making and entering into through booking arrangements with other companies except with the consent of the Great Eastern; that the effect of such a stipulation if sanctioned by Parliament would be to give the Great Eastern company, who were rivals and competitors with the petitioners as carriers between important places north and south of the Thames, a veto in all through booking arrangements for traffic for which the East London railway could be used; that such a stipulation was entirely opposed to public policy and to the practice of Parliament, and if sanctioned would give to the Great Eastern company an undue advantage, which might be used unjustly towards the petitioners and all other companies owning systems of railways north and south of the Thames, and exchanging

traffic by means of the East London railway; that it was also proposed by the 10th article of the agreement that the East London should afford to the Great Eastern, and that the latter company should have the right, on giving six months' previous notice, to exercise running powers over the East London railway, so as to obtain access to the southern railways on such terms as, failing agreement, might be determined by arbitration; that the public objects to secure which the East London line was sanctioned by Parliament, and which were declared in the Report of the Committee on Metropolitan railway schemes of 1864, would not be secured, and might be defeated unless equal rights of user and equal facilities for the interchange of traffic and the like accommodation were afforded and secured to the petitioners as to the Great Eastern company; that the provisions of the 7th and 10th articles of the agreement would give an undue advantage to one line of communication over another; and the petitioners objected on the ground of competition to the confirmation of the agreement.

The *locus standi* of the North Western company was objected to because, (1) the bill does not give power to take or interfere with any lands, &c. of the petitioners; (2) the station referred to in the petition is the property of the North London company, who have petitioned, and the North Western company have not such an interest there as would entitle them to be heard separately or at all in reference to that station; (3) the possibility of inconvenience arising from obstruction to traffic in the public thoroughfares leading to the station during the progress of the works proposed to be authorised by the bill does not afford a ground of objection entitling the petitioners to be heard against the construction of such works; (4) none of the works proposed will or can give rise to any fresh competition between the petitioners and the promoters, or any competition which would not equally exist if the works already authorised were constructed instead of those proposed; (5) the petitioners have no interest in the works proposed to be authorised or abandoned under the powers of the bill or in any of the provisions of the bill in reference thereto which would entitle them to be heard consistently with practice; (6) they have no subsisting agreement or arrangement with the East London railway company which would be affected by the proposed agreement between the promoters and the East London railway company, and none of their existing rights or privileges are affected by the agreement, and they have no interest in the subject-matter entitling them to be heard against it; (7) the petitioners have no sufficient interest in the subject-matter of the bill.

The *locus standi* of the Midland railway company was objected to because, (1) the petitioners have no subsisting agreement or arrangement with the East London railway company, which would be affected by the proposed agreement between the promoters and the East London company, and none of their existing rights or privileges are in any manner affected by the agreement, and they have no interest in the subject-matter entitling them to be heard against

it; (2) the petitioners have no sufficient interest in the subject-matter of the bill.

Mercer, Q.C. (for the North Western railway company): The East London line, as sanctioned by Parliament in 1864, was to be carried on high arches, and at a level enabling it to join the North London and the North Western. To that scheme we made no objection, because it would have afforded an easy communication between our system and the Great Eastern. But now it is proposed to carry the line underground at a different level from that of the North Western, and in addition, the present line touches the joint station of the North Western and the North London. The *locus standi* of the North London is admitted in respect of that touching, but the North Western have omitted to insist upon the right to a *locus standi* which that touching gives them. By the proposal to construct the railway under ground by cut and cover instead of on arches we shall, during the construction of the tunnel, be deprived of access to our goods department; but apart from that objection, the proposed alteration of level, hindering us from communicating with the line on the same level, as would have been the case if the authorised line had been carried out, gives us a *locus standi*. Paragraph 7 in the agreement scheduled to the bill says, "Such user of the single or double line (as the case may be), and the East London accommodation to be provided at the station to be for East London traffic proper. Through booking with other companies by the East London to be with the consent of the Great Eastern. The East London to pay the junction expenses;" which means that there is to be no through booking with any other company except with the consent of the Great Eastern Company. In the heading of the agreement it is stated to be "between the companies their successors and assigns respectively," which looks like perpetuity. The North Western company have gone to great expense (as the Midland have also done) in getting access to the Thames on the north, and we ought to be allowed to go before the committee to ask that we shall not be debarred from getting across the Thames by means of the East London, which gives the only railway access between the north and south of the Thames below London Bridge. We are really landowners affected, and have received notice as occupiers, but it is a point not mentioned in the petition, and therefore we have no right to mention it now, though we shall get in on that ground in the House of Lords. It is objected that a temporary obstruction does not give a *locus standi*. That point of itself may not be sufficient, but it is an aggravation of our position. As to the scheduled agreement, and the provision that through booking between the East London and other companies should be by consent of the Great Eastern, I never saw a bold attempt at monopoly.

Venables, Q.C. (for the Midland company): The interpretation put by the promoters of the East London bill upon the clause in the agreement relating to through booking is not one which accords with the plain meaning of the words. At all events, we are entitled to go before the committee to have the meaning made

clear, and to ask that the veto of the Great Eastern company on through booking shall be struck out. We also claim the right to ask for equal rights with other companies as to running powers. In the Dundalk and Greenore Act, 1867, it was provided that when the companies named in the Act entered into traffic agreements with the contracting companies—that is to say, companies in the position of the Great Eastern company here—such companies should, if required, enter into a similar agreement with any company or person not parties to such agreement (Cliff. & Steph. 107).

Round (for promoters): The notice served on the North Western Company is in respect of some premises occupied really by Messrs. Chaplin, which they are under notice to quit, and which they will have quitted by the time the bill comes before the committee. The North Western petition as owners of the station in Liverpool Street; the fact is they are not the owners of the station; the North London are the owners of it.

Mercer: I can show that the station is the joint property of the two companies.

[Mr. William Jenkins was examined, and stated that under the City Branch Act, 1861, the London and North Western company purchased a portion of the station, nearly half, which was vested in them, soil, buildings, and all. The North London company had the remaining portion, also in fee. It might be that the freehold of the North London intervened between the proposed station of the Great Eastern and that of the London and North Western, but the access to the goods depot of the latter company also intervened.]

The CHAIRMAN: We will hear the promoters on the question of through booking.

Round: The agreement is only intended to limit through-booking arrangements over the line (about half a mile in length) to be provided by the Great Eastern. It is reasonable that any arrangements for through booking over lines made with the money of the Great Eastern should be made only with their consent; and if it is not clear that this is the meaning of the agreement, the promoters are ready to put in words to make it clear. As to the Midland company, they by an agreement with the Great Eastern company got power to run into the City station of the Great Eastern and to the docks, that concession being made in consideration of the Great Eastern being allowed by the Midland to run into the new station at St. Pancras. The London and North Western are in a different position; they have only the right to run into the Liverpool Street station, and have no power of communicating with and using the station of the Great Eastern, as the Midland have; and the Great Eastern being the parties who are going to make the line from their junction with the East London to Liverpool Street—that line being constructed for a limited purpose, and not being calculated to carry a large through traffic—they claim the right to prevent through booking with other railways over it. But the bill does not prevent the Midland from exercising the power they now have of entering into through booking

arrangements with the East London, the Midland now having the power to run into Liverpool Street station by running over the Great Eastern line, and so forming a communication with the East London. With respect to the claim of the Midland to go before the committee and ask for the same running powers over the East London as are about to be given to the Great Eastern, I submit that the Great Eastern having found the money, are entitled to those running powers.

The COURT: The *locus standi* of the North Western and Midland railway companies is allowed against Section 25 of the bill (referring to the agreement in Schedule A), and so much of the preamble as relates thereto.

Agents for the Bill, *Sherwood & Co.*

Agent for the London and North Western railway company, *Blenkinsop.*

Agents for the Midland Company, *Dyson & Co.*

METROPOLITAN AND ST. JOHN'S WOOD RAILWAY BILL.

8th March, 1870.—(Before Mr. DODSON, M.P., Chairman: Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petitions of (1) NORTH LONDON RAILWAY COMPANY, and (2) LONDON & NORTH WESTERN RAILWAY COMPANY.

Railway—Extension—Competition—Proximity of Stations.

The Metropolitan and St. John's Wood railway company, whose line ran from the Baker Street station of the Metropolitan railway to the Swiss Cottage in the Finchley Road, proposed to extend this line to Kilburn. The bill was opposed by the North London railway company, who, under agreement with the North Western, worked the Hampstead Junction line, which has stations both in the Finchley Road, where the proposed line would begin, and in the Edgware Road, where it would terminate. The North Western, as owners of the Hampstead Junction line, and of a station at Kilburn on their main line, also opposed the bill. The terminus of the proposed line would be distant from the Edgware Road station of the Hampstead Junction line, a quarter of a mile, and from the Kilburn station of the North Western main line, three-eighths of a mile; while the Moorgate Street station of the Metropolitan railway (to which most of the traffic on the new line would flow) was only a quarter of a mile from the Broad

Street station of both the petitioning Companies. It was replied that the competition to be created here was too remote to justify the *locus standi* of either petitioner, especially as much of the traffic on the new line would go by the Metropolitan line westward as well as eastward to Moorgate Street:

Held, that the petitioning companies had no *locus standi*.

This was a bill "to enable the Metropolitan and St. John's Wood railway company to abandon certain parts of their authorised undertaking, and to extend their railway to Kilburn." The line proposed to be authorised was about 7½ furlongs in length, wholly situate in the parish of St. John, Hampstead, commencing by a junction with the existing railway of the company at the Finchley Road, and terminating at the Edgware Road.

The North London railway company alleged that, by agreement with the North Western and other companies, they worked the passenger traffic between Broad Street and Kew and Richmond, which passed by Finchley Road and Edgware Road Stations, and that the proposed railway would be in direct competition with such traffic, inasmuch as the Edgware Road Station on the Hampstead Junction Railway, worked by the petitioners, under their agreement, was distant only about a quarter of a mile from the terminus of the proposed railway, which would run in a direction nearly parallel to the Hampstead Junction railway; that the present service of trains was sufficient for the requirements of the neighbourhood, and although the proposed railway was designed to have the effect of diverting some portion of the present traffic carried by the petitioners, the ultimate result would probably be that less efficient and convenient service would be provided for the public, and a serious pecuniary loss would result to the petitioners; that no public necessity could be shown for the proposed railway, for in addition to the railway worked by them, there was within a very short distance the North Western railway, and the train services provided by the two companies were amply sufficient, and could in case of need be increased to any extent necessary to meet all the requirements of the district.

The petition of the London and North Western company urged that the intended railway from the Finchley to the Edgware Road was wholly uncalled for and unnecessary; that the petitioners' Hampstead Junction line, on which there were frequent trains, extended from the Finchley Road to the Edgware Road, having a station in each of those roads, and was at no great distance from the railway which the promoters sought powers to construct; that there was also a station at Kilburn on the petitioners' main line, close to the Edgware Road, at which trains frequently stopped; that whilst the proposed railway would not of itself be sufficiently remunerative to insure a sufficient return of the capital required for its construction, it would

divert from the railway system of the petitioners a portion of the traffic accommodated by them; that owing to the pecuniary position of the promoters they were not entitled to powers to construct the proposed railway, as the concession to them of such powers would in all probability remain in their hands unexecuted and not be carried out for many years to come, if at all, and would be a bar to any further facilities being provided by the petitioners for the accommodation of the Finchley Road and Kilburn districts; and the intended railway would open and form a new and injurious means of competition for diverting from the railways of the petitioners traffic now adequately accommodated thereby, to their great loss and injury.

The *locus standi* of the North London Railway Company was objected to because (1) the bill contains no provision for taking or using any lands, railway stations, or accommodations of the petitioners, or for running engines or carriages upon or across the North London Railway, or for granting other facilities in respect of that undertaking; (2) the petitioners allege that the proposed railway will be in direct competition with their passenger traffic between Broad Street and Kew and Richmond, but no such competition can arise, for the proposed railway and the existing railway of the promoters do not go to Kew or Richmond, nor are the Finchley Road or the Edgware Road Stations, referred to by the petitioners, stations which belong to them; (3) even if the proposed railway will compete with that of the petitioners, it is not such a competition as entitles them to be heard; (4) the petitioners do not allege any sufficient ground of objection, according to practice.

The objections to the *locus standi* of the London and North Western company were substantially the same.

Johnson Q.C. (for North London railway company): The issue raised here is one of competition, the question being whether that competition is of such a kind as entitles the petitioners to be heard. The Kilburn traffic of the North London railway will be diverted if the proposed line is made; and the two stations of the competing lines are in close proximity to each other. When a railway company asks for further powers which will affect those already vested by Parliament in an existing company, considerable latitude ought to be given to those claiming the right to be heard in opposition to such bill. In this case the North London company are carrying traffic into the City from the immediate neighbourhood of the proposed line, and that traffic will be abstracted and diverted if the proposed railway is sanctioned. In the *North London Bill*, 1867 (Cliff. & Steph. 111) the *locus standi* of the Great Eastern Company was disallowed on the ground that they had no such interest in the line in respect of which they petitioned as entitled them to be heard, Messrs. Peto being lessees of the line, and the parties who in fact ought to have been heard. Here the North London are owners of the line to Chalk Farm; and they have a specific agreement with the London and North Western, under which the Hampstead Junction railway

is worked exclusively by them, as if it formed an integral part of their own system.

Merewether, Q.C. (for London and North Western company): Our case is still stronger than that of the North London in respect of the competition set up with the Hampstead and City Junction line, because the London and North Western are owners of that line. The Edgware Road station of the proposed line will be a quarter of a mile from one of our lines, and three-eighths of a mile from another. Moreover the Moorgate Station of the Metropolitan, to which a great deal of the traffic of this proposed line will go, is only a quarter of a mile from the Broad Street Station, which belongs to us as well as to the North London. The saving in distance between the point of departure and the City by the new line over the existing line of the North Western will be one mile; and the line is obviously proposed for the purpose of diverting traffic from our line. In similar cases of competition railway companies have been heard: e. g. against a line promoted by the London and North Western starting from the Whitechurch line and proceeding to Chester, the Great Western were heard: against the Charing Cross line the South Western and the Brighton companies were heard, though it touched neither of their systems: against the London Chatham and Dover line (High Level) the Brighton company were heard, though the two systems were not in such close communication as these lines are. I know of no case in which the *locus standi* has been denied where there is such close rivalry and such close proximity as exist here. The case of the *North London Railway Bill* (Cliff. & Steph. 111.) does not apply to us, because we are the owners of the line.

Shrubsole (Parliamentary agent, for promoters): The London and North Western company have not shown what traffic the proposed line will divert from them. Stress has been laid on the traffic to the City, but that is not the only traffic which the proposed line is intended to accommodate, for it will take traffic westward as well as eastward. In the case of both petitioners the competition created by this bill, if any such will be created, is too remote to justify a *locus standi*; and it will be much less in character and kind than that which would have been created if the authorised line now to be abandoned had been carried out.

The *locus standi* of both petitioners was Disallowed.

Agents for Bill, *Dyson & Co.*

Agents for North London railway company, *Paine & Layton.*

Agent for London and North Western railway company, *Blenkinsop.*

METROPOLITAN DISTRICT RAILWAY BILL.

7th and 8th March, 1870.—(*Before Mr. DODSON M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petitions of (1) BOARD OF WORKS FOR THE WHITECHAPEL DISTRICT; (2) SOUTH EASTERN RAILWAY COMPANY.

Railway—Extension of Line—Consequential Abandonment—Fear of, by Vestry—and by Railway Company.

A metropolitan railway company, with an authorised terminus at Tower Hill, though the line was not yet completed to that point, proposed an extension to the Mansion House, starting from a point some distance short of Tower Hill. A Vestry Board, whose district the line, if completed to Tower Hill, would have served, opposed this extension, contending that the Company ought at least to be bound to postpone its construction till they had completed the already authorised line, which otherwise might possibly be abandoned. The South Eastern Railway Company, into whose station at Cannon Street the promoters were authorised to run, petitioned on the same grounds, urging that the authorised scheme of the promoters (and especially that portion connecting it with the petitioners' system) should first be completed in its entirety. The bill proposed no abandonment of any portion of the original undertaking:

Held, that no property or rights of the petitioners being interfered with, the mere apprehension that such abandonment might hereafter be contemplated gave no *locus standi* either to the vestry or the petitioning railway company.

The bill was one for an extension of the Metropolitan District Railway to the Mansion House.

The petition of the Board of Works for the Whitechapel district alleged that the railway was authorised to be made to Trinity Square, Tower Hill; that Tower Hill was within the petitioners' district, and therefore under their control and jurisdiction; that the railway was sanctioned by Parliament in 1864, as affording railway accommodation to an important part of the metropolis, and connecting it with the Metropolitan and other railways; that any failure on the part of the Company to complete their undertaking in its entirety, especially that part of it extending to Tower Hill, would be very inju-

rious to the petitioners' district, and would deprive the inhabitants of accommodation upon which they relied, leaving unmade an important link in the system of metropolitan railways, which in 1863 was recommended by a joint Committee of the two Houses of Parliament, upon whose report in favour of the Metropolitan District Railway the Act authorising that railway was passed; that as to the Mansion House extension, the Company ought not to have power to make it until they had completed the whole of the important works for the construction of which they were incorporated; that the petitioners were injuriously affected by the proposed bill, inasmuch as its passing would or might lead to the abandonment of the line to Tower Hill, and this, they urged, ought not to be directly or indirectly sanctioned; that if, notwithstanding, the proposed extension to the Mansion House were sanctioned, the Company's powers with reference thereto should be suspended until they had completed their railway, as already authorised.

The petition of the South Eastern Company alleged that any failure on the part of the promoters to complete their undertaking in its entirety, and especially that part of it extending to the petitioners' Cannon Street Station, would be very injurious to the petitioners and the public: and their petition repeated the arguments urged against the bill by the Whitechapel Board.

The *locus standi* of the Whitechapel Board of Works was objected to because (1) the main purpose of the bill is an extension of the Metropolitan District Railway to the Mansion House, no powers to abandon any portion of the authorised undertaking of the Company being sought; (2) the petition reveals no ground whatever upon which the petitioners can claim to be heard, no property belonging to them or under their control being affected and none of their rights impaired by the bill, and the petition proceeding entirely upon the assumption that the authorised railway which is to terminate, not in their district, but in the neighbourhood of their district, is to be abandoned; (3) the petitioners state that the Metropolitan District Railway is authorised to be made to Trinity Square, Tower Hill, and that Tower Hill is under their control and jurisdiction; but they do not state what, for the purposes of the petition, they ought to have stated—that Trinity Square, which is the authorised terminus, is not within their control and jurisdiction; (4) as to the allegation that the petitioners are injuriously affected, inasmuch as the passing of the bill would or might lead to the abandonment of the extension to Tower Hill, an apprehension by the petitioners of a possible result, which result does not appear upon a bill, gives no right to be heard.

The *locus standi* of the South Eastern Railway Company was objected to substantially on the same grounds.

Shrubsole (Parliamentary agent, for both petitioners): We ask to be heard in order to insist that the Company should make the line they were authorised to make, and perform an undertaking upon the faith of which they got their Parliamentary powers. As to the objections to the

locus standi of the Whitechapel Board, the fact is that the extension to Tower Hill is within the petitioners' district, Tower Hill being under the jurisdiction of the Board. We do not object to the extension to the Mansion House; all we say is that if this extension is sanctioned, the original line should first be carried out.

Mr. RICKARDS: Will not the Company be obliged to come for an Act before they can abandon the Tower Hill extension?

Denison, Q.C. (for promoters): That is so.

Shrubsole: Practically the Company can abandon the Tower Hill portion of their scheme without coming again to Parliament. The promoters would be liable to a money penalty, but by expending one-half of their authorised capital they could escape from this liability, and need not apply for an abandonment bill.

Denison: If the Company do not apply for an abandonment bill they will always have the obligation hanging over their heads whenever they come to Parliament for any other bill.

Shrubsole: If the promoters do not intend to do that which my clients fear they will do, why am I not to be heard against a bill by which they undertake fresh liabilities and fresh works? At all events the promoters should not be allowed to contract new liabilities until they have finished the works which they have been authorised, and have bound themselves to make.

Denison (for promoters) was not called upon.

Locus standi of both petitioners *Disallowed*.

Agents for Bill, Dyson & Co.

Agent for Petitioners, Shrubsole.

METROPOLITAN RAILWAY BILL.

7th and 8th March, 1870.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petitions of (1) METROPOLITAN BOARD OF WORKS; (2) WHITECHAPEL DISTRICT BOARD OF WORKS.

Railway—Abandonment—City of London—Metropolitan Board—their right to represent inhabitants generally—though the Corporation also petition.

Against a bill promoted by the Metropolitan Railway Company for the abandonment of a portion of their authorised line, called the Tower-hill Extension, the Metropolitan Board of Works petitioned, and although the line to be abandoned was situated wholly within the limits of the City, and the *locus standi* of the Corporation of London, as petitioners against the bill, had been conceded:

Held, that the Metropolitan Board of Works, as representatives of the general interests of the Metropolis, were entitled to be heard.

This was a bill for the abandonment of part of the Tower-hill extension of the Metropolitan Railway. It was opposed by the Metropolitan Board of Works and by the Whitechapel District Board, but the claim of the latter body to appear was not insisted on.

The petition of the Metropolitan Board alleged that the Tower-hill extension was promoted by the company, and sanctioned by Parliament, upon the ground that it would afford railway accommodation to an important part of the metropolis, bringing it into connection with the Metropolitan railway and various other lines with which that railway was connected; that the proposed abandonment would be injurious to the metropolis, and particularly to inhabitants and persons resorting to the eastern parts thereof, and further, was most undesirable, inasmuch as it would destroy an important link in the system of metropolitan railways reported upon favourably in 1864 by a joint committee of the two Houses of Parliament, whose recommendations received the sanction of the Legislature; that instead of being authorised to abandon any portion of this extension, the company ought to be compelled to complete it promptly; and that so much of the preamble as affirmed the expediency of relieving the company from the duty of constructing part of the extension railway could not be substantiated by evidence.

The objections to the *locus standi* of the Metropolitan Board of Works were:—(1) the main object of the bill is the abandonment of part the Tower-hill Extension; (2) the petition specifies no ground on which the petitioners claim to be heard; it does not state that any property of theirs is affected, or rights interfered with; it merely alleges that the petitioners are injuriously affected, but does not state how; it gives a narrative of the circumstances connected with the origin of the railway and mere expressions of opinion; (3) the local management of the City of London is not vested in the petitioners but in the Corporation, who petition against the bill.

Shrubsole (Parliamentary agent, for petitioners): I will not argue the case of the Whitechapel Board: but the Metropolitan Board of Works have always been heard against private bills applied for within the metropolis, and the question is, whether they have not an equal right to be heard against a bill proposing to abandon a railway within the metropolis. S. O. 131 has been expressly altered so as to admit the Metropolitan Board in cases to which that S. O. applies, and the Board has a recognised position in Parliament upon all bills affecting the metropolis. As to the objection that if any one has a right to be heard, it is the Corporation of London, inasmuch as the extension proposed to be abandoned is within the City, my answer is that the promoters ought rather to have objected to the Corporation being heard, for they are represented upon the Metropolitan Board. The proposed abandonment of a line so reported upon

by a joint committee of the two Houses, is not a City question only; it is a matter affecting the inhabitants of the whole metropolis, whom we represent. The question whether the Metropolitan Board have a right to be heard upon a bill affecting the City, was settled in 1867, when the Metropolitan Board of Works were allowed a *locus standi*, under S. O. 131, against the *London City Improvement Rates Bill*, a measure promoted by the Corporation for raising money by means of a special rate to be expended in the execution of improvements in the City (Cliff. & Steph. 145). The Metropolitan Board have also been heard against the Imperial Gas Bill, the South Metropolitan Gas Bill, the Tramways Bill, several Railway bills, and the Foreign Cattle Market Bill.

Holway (for promoters): The Metropolitan Board of Works have no right to be heard in every case where the interests of the metropolis are directly or indirectly interfered with, and no such rule has been laid down by the Court. The *City Improvement Bill* was a case of rival jurisdiction as to rates. The Metropolitan Board opposed the bill on the ground that it would interfere with their power of levying rates within the City, and there being in that case a claim to concurrent jurisdiction, the petitioners were entitled to be heard. But the Metropolitan Board are not constituted to take care of the private interests of every single inhabitant of London to whom it may be a matter of interest that a certain railway should take him from one point to another. They are only the guardians of certain interests defined in the Act constituting the Board. No doubt they have been let in to oppose gas and tramway bills, but such bills involve an interference with the roads, the sewage, the paving and lighting of the metropolis, and those are subjects with which the Board were specially constituted to deal, and upon which, therefore, they would be rightly heard.

Mr. RICKARDS: Whom do you regard as the proper representatives of the metropolis in respect of matters not falling within the category of those with which the Metropolitan Board was specially constituted to deal?

Holway: In this case the Corporation are the representative body, and their *locus standi* has been admitted.

Mr. RICKARDS: Put the case of a bill affecting not only the interests of the City but the interests of the metropolis generally—for example, suppose the trade of the port of London were affected?

Holway: The Metropolitan Board can only represent the metropolis in respect of those matters with which they were specially constituted to deal; and they are not empowered to represent the inhabitants on such a question as the abandonment of a railway.

Mr. RICKARDS: Do they not represent the metropolis upon all questions as to which, in the case of a municipal borough, the Corporation would represent the inhabitants?

Holway: The whole of the line which we propose to abandon is within the City, and the Corporation, whose *locus standi* is admitted, go fully into the matter.

Mr. RICKARDS: It may be alleged that this

bill affects the interests not only of those who have property within the City, but of those who use the line and who go in and out of the City.

Holway: If the inhabitants of the metropolis generally are to be represented on such a matter, there seems to be no good reason why the inhabitants of any part of England should not also be represented, because they may use this line. It may, therefore, be said to be, not a metropolitan, but an imperial question.

Mr. RICKARDS: If the line proposed to be abandoned were outside the City, who would be the proper parties to represent the public?

Holway: In the absence of any municipal body, the inhabitants must meet and petition, as in the case of traders and freighters.

Mr. RICKARDS: Have the Metropolitan Board been allowed to appear upon any bill affecting, not merely the breaking-up of streets and roads, but general interests?

Shrubsole: Yes, upon the Metropolitan Cattle Markets Bill.

Coates (Parliamentary agent, for promoters): That was a hybrid bill, and all mankind were heard against it.

Mr. RICKARDS: Were the Metropolitan Board heard upon the general question of how the tramways would affect the metropolis?

Shrubsole: Yes, undoubtedly.

The COURT: The *locus standi* of the Metropolitan Board of Works is *Allowed*. The *locus standi* of the Whitechapel Board is *Disallowed*.

Agents for Bill, *Dyson & Co.*

Agent for Petitioners, *Shrubsole*.

ABERDARE GAS BILL.

11th March, 1870.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.)

Petition of the ABERDARE AND ABERAMAN GAS COMPANY, and of RATEPAYERS and INHABITANTS.

Gas Bill—Rival Companies—Ratepayers—Local Board of Health—Representation—Separate Interests—Should petition separately.

A gas company, which had lighted a district for twenty years, promoted a bill seeking for statutory powers, another company having in the previous session obtained powers in the same district. The latter company petitioned against the bill, and was joined by a majority of ratepayers and consumers. The local board did not petition either way:

Held, that the principle of representation did not apply here, and that the ratepayers as well as the rival company had a *locus standi*. But the Court stated that the opposing gas

company and the ratepayers should have petitioned separately, instead of jointly.

This was a bill to incorporate and confer further powers on the Aberdare gas company.

The petitioners, the Aberdare and Aberaman gas company, obtained an Act in 1869 incorporating them for the purpose of supplying gas to the towns of Aberdare and Aberaman, and the parish of Aberdare. The then existing company, not incorporated, and who now promoted the present bill, procured the insertion in that Act of a clause, compelling the new gas company to purchase their works, if they (the Aberdare gas company), within three months after the passing of that Act, gave notice of their desire to sell. They allowed this time to expire, but afterwards offered to sell their gas-works at what was deemed to be a prohibitory figure. They now desired to be incorporated themselves, and obtain statutory powers to go into the territory which their rivals were empowered to supply with gas last session. This proposal the company already authorised resisted, and the ratepayers and consumers within the proposed limits who joined in the petition alleged that they would be seriously injured by the provisions of the bill. The petition was signed by 584 persons, none of whom were shareholders in the petitioning company.

The *locus standi* of the petitioners was objected to because (1) no land, property, or right of theirs was taken or interfered with; (2) as regarded the ratepayers and inhabitants, no meeting had been duly called, and those petitioners were represented by the local board of Aberdare, who were the proper parties to be heard under S. O. 131; (3) as regarded the gas company, they had not yet commenced to supply gas, and could not be heard on the ground of competition, seeing that the promoters had been lighting Aberdare for upwards of twenty years; (4) petitioners had no sufficient interest to entitle them to be heard against the bill; (5) there was no allegation upon which, according to practice, they could be heard.

Pember (for petitioners): In number and also in rateable value, the petitioning ratepayers form an actual majority of the householders who are direct ratepayers (i.e. who pay their own rates), within the district covered by the bill. They are not represented by the local board, which has neither petitioned in favour of the bill nor against it; and in fact the board cannot very well take such a course, in the face of the decision of the Court of Queen's Bench, in the *Workshop** case, where the expenses of a local board of health in opposing a gas bill in Parliament were disallowed. A local board does not represent the inhabitants in the same sense that a Corporation represents them. The terms of incorporation of a town are that the inhabitants shall be incorporated, and form a corporate body, to be called the mayor, aldermen and burgesses of a certain place, so that though it may be fairly said that a Corporation represents the inhabitants, that cannot be said of

a local board, who only represent the places in which they are established for certain purposes, which purposes must be construed by a reference to the clauses of the Act constituting the local board. It has been held that Corporations do not represent inhabitants for all purposes. For example, they do not represent traders and freighters; and though it may be said that a local board represents the inhabitants with regard to the breaking up of the streets, it does not represent consumers with reference to the supply of gas.

Rodwell, Q.C. (for promoters): If this were the petition of the company only, there would not perhaps be any objection to their *locus standi*; but it is informal and unusual, being a mixed petition, with regard both to allegations and subscription, some allegations relating entirely to the case of the company, others jointly to the company and the ratepayers, and some to the ratepayers alone. I ask the Court to strike out of the petition all those portions which do not relate to questions of competition. The local board, being elected by the ratepayers, represents them. Besides, the petition is not the result of a public meeting of the inhabitants.

The COURT: The *locus standi* of the Aberdare and Aberaman Gas Company, and of the ratepayers, gas consumers, and inhabitants is allowed. But the Referees think it would have been a preferable and more convenient course if there had been separate petitions.

Agent for Bill, *Bell*.

Agents for Petitioners, *Marriott & Jordan*.

NORTH METROPOLITAN RAILWAY BILL.

11th March, 1870.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.)

Petition of ADAM RIVERS STEELE.

Railway—Extension of Time—Occupier—Alleged wrongful description by petitioner—Sufficiency of objections—Practice.

A bill promoted by a railway company, extending the time for compulsory purchase of land, was opposed by the occupier of a house, whose petition was objected to in argument (*inter alia*) on the ground that it wrongly described the house. The petitioner replied that the description was the same as that contained in the deposited plans, as well as in the notice of the bill served upon him by the company; and he also urged that the objections were insufficient, as they did not clearly specify the ground of objec-

* *Workshop v. Marrie*, 28 L. T. 266.

tion thus raised. The notice served by the company was not produced :

Held that the petitioner had a *locus standi*.

The bill was one to extend the time for compulsory purchase of lands for the purposes of the North Metropolitan Railway Act, 1867.

The petition alleged (*inter alia*) that the petitioner was tenant and occupier, by his servant and gardener, of a house, No. 4, Jesmond Cottage, Cricklewood Lane, numbered 87 on the deposited plans and books of reference of the promoters as to the parish of Hendon.

The *locus standi* of the petitioner was objected to because (1) the extension of time for the compulsory purchase of lands sought for by the bill does not apply to or affect any lands or buildings in which the petitioner is so interested as to entitle him to be heard; (2) the tenancy and occupation alleged are not such as according to practice entitle the petitioner to be heard; (3) the greater portion of the petition is made up of complaints of the promoters' past proceedings, and of correspondence with the Board of Trade as to the warrant for extension of time granted by that Board, but it does not disclose any ground of opposition upon which the petitioner can be heard; (4) neither the grant of the warrant, nor the statement as to what the petitioner will be able to do if the extension of time now sought be not granted, entitles the petitioner to be heard; (5) the rights and remedies of the petitioner as a creditor of the company will not be in any way affected by the passing of the bill; (6) the petitioner cannot be heard according to practice.

Granville Somerset, Q.C. (for petitioner): No notice to treat has been given, and therefore there is no contract between the petitioner and the promoters; but notice of application to Parliament for extended time has been given by the promoters to the petitioner's gardener.

Ledgard (for promoters): I can show that it is not true, as stated in the petition, that No. 4, Jesmond Cottage, Cricklewood Lane, is in the occupation of George Weston, and that No. 87 upon the plans is occupied by George Weston. The petitioner is bound by the statements in his petition, and he must prove that he is the occupier by his servant of the particular house described in the petition.

Somerset: The petitioner has copied the description from the promoters' own notice. And it being the fact that the promoters ask for an extension of time for the taking of certain property, of which the petitioner is the tenant and occupier, whether No. 87 on the plans or any other number, it is sufficient if the petitioner has said in general terms that the promoters ask to extend their powers over property in his tenancy, because the promoters could have found out by the deposited plans that such was the case.

[The son of the petitioner was called and deposed that his father was tenant, by his gardener, of a house in respect of which the promoters had served notice. Witness could not say that the number of the house as set forth in the petition was correct, but the description was exactly that contained in the notice

of the railway company; he could not however produce the notice.]

Somerset: Perhaps the promoters will produce it.

Ledgard: It is not for us to produce the notice in order that the petitioner may prove his case.

Somerset: The notice of objection is not sufficiently specific; the petitioner could not infer from it that the promoters intended to suggest that the house was wrongly described in the petition.

After hearing *Ledgard* in reply,

The COURT decided that the petitioner had a *locus standi*.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioner, *Steele & Sons.*

RUABON WATER BILL.

11th March, 1870.—(*Before Mr. DODSON, M.P. Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.*)

Petition of WREXHAM WATERWORKS COMPANY.

Water Companies—Area of Supply—Waterworks Clauses' Act, 1847—Interference with Supply of Existing Company by Laying Pipes.

Against a bill to incorporate a company for supplying with water, amongst other places, the township of Exclusham Above, a company already possessing Parliamentary powers for the supply of the neighbouring district, and particularly the adjacent township of Exclusham Below, petitioned. They asked that Exclusham Above should be omitted from the bill, on the ground that this township was one falling naturally within their own limits (though not included in their Act), and that by the laying of pipes through the township, owing to the nature of the strata, their supply would indirectly be affected. It did not appear that under the bill there would be any direct abstraction of water from the petitioners' sources of supply, or that any property of theirs was interfered with :

Held that the petitioners had no *locus standi*.

This was a bill for better supplying with water the town of Ruabon and places adjacent, including the township of Exclusham Above, in the county of Denbigh; and for the incorporation of a company with that view.

The petitioners were incorporated by the Wrexham Waterworks Act, 1864, under which they were authorised to supply water within the borough of Wrexham, and the townships of

Exclusham Below, Erddig, Bersham, Broughton, and Stansby, in the county of Denbigh. They were also empowered by the Act to collect and impound the waters of the Pentrebychan brook, and to construct various other works which had been for some time completed and in operation. The petitioners alleged that the township of Exclusham Above, within which the promoters sought an exclusive right to supply water, was the township in and through which the Pentrebychan brook and its tributaries arose and flowed, from which the petitioners derived their sole supply of water, and within which their impounding reservoir and other works were situated; that the bill relieved the promoters from the obligation imposed by the Waterworks Clauses Act, 1847, to supply water to every part of the district within the specified limits, and only required them to afford a supply to such portions of the district within their limits as could be supplied without using greater pressure than such as might be had by gravitation; that the township of Exclusham Above was so situated with regard to the proposed reservoir and works of the promoters that it would be impossible for the promoters to supply any part of that township with water without far greater pressure than could be supplied by gravitation; that Exclusham Above was within the limits which the petitioners "should be empowered" to supply with water, as Parliament had empowered them to take and impound the streams, springs, and waters which gathered in this township, and flowed into the Pentrebychan brook; that if the promoters were empowered to include Exclusham Above in their limits of supply they would be enabled to sink mains and run pipes through that township in such a manner as would divert and interfere with the free flow of the water into the Pentrebychan brook, and into the reservoirs belonging to the petitioners; that the petitioners did not seek to include Exclusham Above within their limits of supply when they applied to Parliament in 1864, as this township was then and still remained very sparsely populated, being in fact a mere agricultural district, the greater portion of which was unenclosed mountain inhabited by farmers and cottagers, who were well supplied by the waters of the Pentrebychan brook; that should the population of the township at any future time so increase as to render an additional supply of water necessary (which was not improbable, there being numerous lead and coal mines in the immediate neighbourhood) the powers sought by the bill would prevent the petitioners from affording such supply as they alone, consistently with the natural features of the district, would be able to afford (though they admitted that it would be necessary for them to apply to Parliament for further powers to enable them to do so); that if the powers sought by the bill were granted, Exclusham Above, owing to its being included within the promoters' limits, would be precluded at any future time from enjoying the benefits of a supply of water by the petitioners, who therefore submitted that Exclusham Above should be omitted from the operation of the bill, inasmuch as that township was wholly beyond the proper

limits of the district which the promoters should be authorised to supply, and also because, if it were permitted to form portion of such district, the waters now belonging to the petitioners, and from which they derived their supply, would be abstracted and interfered with.

The *locus standi* of the petitioners was objected to because (1) no property of the petitioners will be or can be taken under the bill; (2) the rights, property, and interests of the petitioners will not be interfered with; (3) the petitioners are not entitled to be heard according to practice.

Venables, Q.C. (for petitioners): In effect the petitioners allege that if the promoters supply Exclusham Above in the only way in which it is physically possible for them to supply it, i. e., by pumping and by pipes, though they will not directly abstract the water of Pentrebychan brook, belonging to the petitioners, they will have to open the ground in order to lay those pipes, the effect of which will be, owing to the nature of the strata, to cause an acceleration of the drainage. The drainage will go off faster in flood-time, and there will be loss in dry weather so as to affect our operations. The petitioners, if they are allowed a *locus standi*, will only ask that the promoters shall be required to strike out Exclusham Above from their limits of supply.

Martin (Parliamentary Agent, for promoters): The real secret of the opposition of the petitioners is that they are now seeking the power of supplying Exclusham Above, though when they obtained their Act of Parliament they deliberately excluded that township from their limits of supply. Though the petitioners allege that the inhabitants of Exclusham Above will be aggrieved by not having an opportunity of being supplied by the petitioners, it does not lie in their mouths to make that allegation, for it is by their own choice that Exclusham Above was omitted from their Act. Moreover, the inhabitants themselves do not make any complaint, and the petitioners, in order to get a shadow of a case for a *locus standi*, are driven to allege that the promoters, by taking the power of supplying Exclusham Above, will damage them by the abstraction of their water. If the petitioners are entitled to a *locus standi* on such a ground, any Water company will be entitled to a *locus standi* against a bill proposing to lay pipes through what may be said to be the watershed of that company. The petitioners have not shown that any operation of the promoters will have the effect of tapping their water supply. The petitioners' water supply is taken from a brook running down from the mountains beyond the district of Exclusham Above, the waters of which brook they have the right to impound; and the promoters, if they supply Exclusham Above at all, which they may never do, will have to bring water to the township from the watershed accorded to them by the bill, which water they will carry to Exclusham Above, not in open conduits but in pipes. It is not to be assumed that in opening the surface of the ground and laying down mains or pipes to carry the water to Exclusham Above from the impounding reservoir,

there will be such a tapping of the water supply of the district as to cause damage to the petitioners.

Locus Standi Disallowed.

Agents for Bill, *Martin and Leslie.*

Agents for Petitioners, *Sherwood and Co.*

CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL.

14th March, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.*)

Petition of the NORTH BRITISH RAILWAY.

Railway—Branch—Time of Construction—Transfer of, to rival company—Running Powers—Water Rights—Agreements—Railways and Harbour Boards.

The North British railway company had statutory running powers over a branch which the Solway railway company were, in 1865, empowered to construct. Afterwards, in 1869, the Caledonian railway company obtained power to work the Solway line, but a clause was inserted in the Act in the interest of the North British company, providing that if the branch were not made within a limited time, the power given to the Caledonian company of working the Solway line should be suspended until the branch was constructed. The Caledonian company now promoted a bill transferring to them the power of making this branch, and the North British petitioned against the bill on the ground that, though their running powers appeared to be reserved by the bill, it would not be to the interest of the Caledonian company to make the branch, and thus the exercise of these powers would be defeated. They also opposed the bill on the ground of alleged interference with their water rights; and because the bill gave the Caledonian company the power of entering into traffic agreements with the Harbour Commissioners of Leith, the petitioners alleging that the promoters should not be authorised to make agreements for special rates and exceptional advantages to the detriment of other traders:

Held that, on these grounds, the petitioners had a locus standi.

The bill was one for conferring additional powers upon the Caledonian railway com-

pany. Amongst other things, it empowered this company to construct, within 18 months from the passing of the Act, the railway called No. 4, which the Solway Junction company were authorised to make by the Solway Junction Railway (Deviation) Act, 1865; to take water from a certain water-course; and to make and carry into effect agreements with the Harbour Commissioners of Leith.

The petitioners opposed the bill, and especially the grant of these powers. With regard to railway No. 4, over which they had running powers secured to them by statute, the petitioners stated that by an Act, passed last session, an agreement between the Solway Junction railway company (till then an independent line) and the Caledonian company was confirmed, enabling the Caledonian to work the Solway Junction, which thereby virtually became part of the Caledonian system; that at the time this Act was passed the Solway Junction main line had made considerable progress, but the branch line No. 4 had not; and the North British, to whom this branch would be valuable for conveying minerals to the harbour of Silloth, procured the insertion of a clause providing that, if this branch were not made within 18 months from the passing of that Act, the powers of working the Solway Junction by the Caledonian company should be suspended till it was made, the Solway Junction company still remaining liable to the obligation of making it; that the bill proposed to get rid of that obligation; that the powers of the Solway Junction to take land for that branch expired on the 15th July last, and their powers of construction would expire on the 15th July next, and the powers conferred on the Caledonian company by the Bill would, in effect, supersede and repeal the powers of the Solway Junction; that the bill provided no other means for the construction of the branch than the penalty imposed by section 22, which might be eluded by payment of the nominal sum of 5 per cent. on the estimated cost of the railway; that the object of the bill was to defeat the exercise of the running powers of the petitioners over the branch without incurring the penalty imposed by the Act of last year; that the petitioners would sustain great loss by being deprived of the advantages of this branch line (in the bill called the Abbey Holme branch), and that there was no obligation on the Caledonian company to complete the branch. As to the alleged interference with their water rights, the petitioners alleged that by clause 4 of the bill it was proposed to enable the Caledonian company to appropriate the water from a certain watercourse separating two parishes, and to use the same for locomotive engines and other purposes; that this watercourse was a tributary of one of the chief streams of water acquired and taken under the powers of the 57 Geo. III. c. 56, for the supply of the Union canal belonging to the petitioners; that, apart from their use in the navigation of the canal, these waters were applied and used by the petitioners under their Acts for the purpose of their railways, and otherwise formed a source of considerable emolument to them, and the abstraction of the water would cause them much loss and damage, unless provision were made for

securing by storage or otherwise an adequate compensatory supply to their canal; that the promoters on the 2nd December last served the petitioners with a notice respecting the watercourse, "forming part of the water used for the purposes of the Union canal, in which we understand you are interested." With regard to the Leith Harbour Commissioners, the petitioners alleged that they were competitors with the Caledonian Company for the conveyance of traffic between the harbour and docks of Leith and all the most important towns and places in the country, and it would be unjust to the petitioners to authorise agreements, such as were contemplated by the bill, conceding special accommodation and exceptional rates to the Caledonian company, while the same advantages might not be extended to the petitioners; and, that if such a power were granted, it ought to be only on the condition that the petitioners and other parties trading with the docks of Leith should be placed on an equal footing with the Caledonian company, and have every advantage which that company might secure under the authority sought.

The objections to the *locus standi* of the petitioners were: (1) the first seven paragraphs of the petition complain solely of the power sought by the bill for the formation by the promoters of a certain railway authorised to be formed by the Solway Junction Railway Company over which the petitioners have running powers; but the bill in no manner interferes with those running powers: on the contrary, it expressly provides that the railway to be formed by the promoters shall be held and deemed for all purposes to be the railway authorised to be formed by the Solway Junction Railway Company, and shall be subject to all the provisions of any Acts, and of any agreements confirmed by Acts, to which that railway would have been subject if constructed by that company, and the petitioners have not alleged in what manner the powers of the bill will impede or postpone the exercise of their running powers over the said railway, and in reality the powers of the bill do not impede or postpone the exercise of those powers: the petitioners do not allege that they have at present any means, nor have they in reality any means of enforcing the completion of the said railway, of which they are deprived by the bill; (2) the 8th, 9th and 10th paragraphs of the petition complain solely of a power contained in the bill to appropriate water from a certain watercourse, which the petitioners allege is a tributary which supplies a canal belonging to them: the watercourse in question is at the very summit of the watershed, where the surface water which ultimately flows into the sea on the east coast of Scotland separates from that which ultimately flows into the sea on the west coast. The petitioners do not allege that any part of their undertaking is within the distance prescribed by Parliament for the protection of interests of this description, and if they were allowed to be heard on this point there is no party using water to however infinitesimal an extent on the line between the watershed above mentioned and the German Ocean, who might not claim a *locus standi*; (3) the 11th, 12th and

13th paragraphs of the petition complain solely of a power sought by the bill to enable the promoters and the Commissioners for the Harbour and Docks at Leith to enter into and carry into effect agreements with each other. But the petitioners have no rights in or over the harbour or docks of Leith, or any agreements with the Commissioners thereof, which will be interfered with by the bill, nor does the bill prevent those Commissioners from entering into agreements with the petitioners; (4) the 14th and 15th paragraphs of the petition are mere general allegations, which do not entitle the petitioners to be heard; (5) the petitioners cannot be heard according to practice.

Clerk, Q.C. (for petitioners): The North British Company claim a *locus standi* on three grounds:—1st, the alteration of an arrangement made last session, in which they are interested; 2nd, interference with water rights; 3rd, arrangements with the Commissioners of the harbour of Leith. As to the first, the bill supersedes the suspensory clause in the Act of 1869, for it introduces a new obligation inconsistent with the obligation in that Act, and virtually in lieu of it. At present the obligation is on the Solway Junction to make a line, and if it is not made, the Caledonian company cannot work the Solway Junction railway; but in this bill there is inserted a provision that the Caledonian company shall make the line, that there shall be a certain period granted for its execution, namely eighteen months from the passing of the Act, and the only penalty imposed upon the company for not making it is the payment of 5 per cent. upon the capital for the construction. It will be well worth the while of the Caledonian company not to make the branch, but to pay the penalty of 5 per cent. upon the money required for the construction of the branch, which was stated last year to be £6,000.

The CHAIRMAN: Do you contend that the making of the branch line by the Caledonian, instead of by the Solway Junction, will affect the running powers over the line granted to the North British company?

Clerk: No, I do not contend that; but I say it will not be to the interest of the Caledonian company to make the line at all. With regard to our water rights, the promoters object that the watercourse is not within a certain distance. But plenty of cases may be cited showing that it is injury and not distance which determines the question of *locus standi*.

The CHAIRMAN: You need not cite authorities on that point.

Clerk: The watercourse from which the promoters propose to take water is a tributary coming from the hills to a stream supplying the Union canal, from which stream the North British company have Parliamentary rights to take water, as canal proprietors. The distance of the watercourse from the canal is about eight miles (*Bromgrove and Droitwich Waterworks Bill, 1866; Smeth. 113*). As to our third ground of objection we say it will be both unfair and unprecedented for Parliament to empower a company like the Caledonian company, carrying on an active competition with the North

British, to enter into special arrangements with dock commissioners behind our back.

Venables, Q.C. (for promoters): As to the Solway Junction, we admit that the branch line is necessary to enable the North British to exercise their running powers to Silloth, but we deny that the North British will be in the slightest degree injured by the bill. Before the Act of last year the Solway Junction had the power to make this branch, but the Solway Junction had no money. The committee of the House of Lords, before whom the bill went, foresaw that though the Solway Junction had still a year to make the branch, very likely it would not be made within that time, and they said, "We will put this check upon you, the Caledonian; we will not allow you to use your powers over the Solway Junction unless this line is made within eighteen months." If not made within the time specified, it will be necessary to get additional powers to make it, which powers are now sought for by the bill; and the Caledonian seek to make it instead of the Solway Junction; but no complaint is made in the petition as to the delay. No power is taken by this bill to repeal or alter the clause of the Act of last year; and the Caledonian company cannot, under the present bill, exercise their working powers till that branch is made. The North British have under this bill an additional security that the line will be made. Unless the Caledonian take this extension of time to make the branch and the power to make it, the probability is that the line will not be made at all, because the fact is the land has not been purchased, and the compulsory powers of purchase have gone.

Clerk: The power to make the line was last year in the Solway Junction, whereas it is now proposed to hand that power over to the Caledonian.

Venables: By the 27th clause of the bill the Abbey Holme branch is, when completed, to form part of the undertaking of the Solway company, as if it had been constructed by that company under the powers of their Act of 1865, and is to be held and deemed for all purposes to be the railway No. 4 authorised by that Act, and is to be subject to all the provisions of any Acts and of any agreement confirmed by Acts, to which that railway would, if constructed by the Solway Junction railway company, have been subject.

Clerk: That is "when completed."

Venables: The railway to which the provision in the Act of last year applies is the railway authorised in 1865, namely, the Abbey Holme branch, and if that railway is never made, the Caledonian will not be able to exercise their working powers over the Solway Junction. Therefore the North British do not lose their security. They will get a railway made which, when completed, will be legally identical with the railway which cannot now be made, so that, if the North British get their *locus standi* and succeed in striking out this clause, they will prevent the Caledonian ever working the line, but they will prevent themselves from ever using the line. With respect to the water rights, the petitioners' canal being within twenty miles

of the watercourse, the promoters served them with notice in respect of it, but it is so insignificant a watercourse that it has not even a name. The North British have not an exclusive right to the whole water of the stream filling the canal, into which stream the watercourse flows. In the *Droitwich and Bromsgrove* case the water of the river was hardly sufficient to supply the canal. No such allegation is made here; there is plenty of water left in the stream.

Clerk: There are weirs on the stream flowing into the canal to dam up the water.

Venables: The injury that can possibly be inflicted on the North British is so infinitesimal that they are not entitled to a *locus standi* in respect of it. The watercourse in question constitutes only a one-thousand-two-hundredth part of the whole watershed of the stream. As to the last point, the power to enter into agreements with the commissioners of Leith, the Caledonian do not by the bill exclude, nor do they want to exclude, the North British from making the same arrangements.

The *locus standi* of the petitioners was *Allowed*.

Agents for Bill, *Grahames and Wardlaw*.

Agents for Petitioners, *Sherwood & Co.*

HEREFORDSHIRE AND GLOUCESTERSHIRE CANAL NAVIGATION BILL.

14th March, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.*)

Petitions of (1) THE SEVERN COMMISSIONERS, and of the PROPRIETORS of the STAFFORDSHIRE AND WORCESTER CANAL.

Canal—Transfer of—Navigation Tolls—Compensation for—Mortgages affecting—Constitution of Board—Representation—Railway—Rival Interests—A amalgamation—Water Carriage v. Land Carriage—Competition—How viewed by Court.

A bill for the transfer of the Hereford Canal to a railway company was opposed by the Commissioners of the River Severn, whose constitution would be affected by the transfer, and who apprehended injury to their tolls on inland navigation from the conversion of the Hereford Canal into a railway; and also by the Staffordshire Canal Company, joining in the same petition, who had advanced money to the River Severn Commissioners on the security of their tolls, and were interested in the traffic on the Hereford Canal:

Held, that these petitioners had a *locus standi*, notwithstanding the fact that the River

Severn Commissioners were guaranteed their income, up to a certain amount, by the Railway Company, and that the Staffordshire Canal, though enjoying communication with it through the River Severn, was 45 miles distant from the Hereford Canal.

The bill was one "for vesting in the Great Western railway company the undertaking of the company of Proprietors of the Herefordshire and Gloucestershire canal navigation: and for other purposes."

The Severn Commissioners by their petition alleged that the entrance lock of the Hereford canal formed one of the termini of their jurisdiction; that the canal itself was authorised by Parliament as opening an easy communication between the county of Hereford and various parts of the United Kingdom; that, together with the river Severn and the Stafford and Worcester canal, it formed part of a chain of inland navigation; and they deprecated any attempt to break up this water system, or to convert any part of it into a railway. The Stafford and Worcester canal company, who joined in the same petition, had under their Act of 1843 advanced to the Severn Commissioners, on the security of their tolls, sums of money amounting in the whole to £180,000, of which but £1,100 had been repaid recently. They contended that inasmuch as the Hereford canal company by their representative on the Severn Commission had concurred in mortgaging the tolls of the Commission to the petitioners, they ought not now to do any act weakening that security. The election of the representative of the Hereford canal company upon the Severn Commission would pass to the Great Western railway: and it was conceded that this gave the Severn Commissioners a limited *locus standi* against the bill.

The *locus standi* of the Severn Commissioners, &c., was objected to because (1) it was not alleged that the bill interfered with any rights, &c., either of the Commissioners or company of Proprietors, or that it enabled the promoters to destroy the canal or obstruct its free use and navigation; (2) the transfer of the power to appoint one of the Severn Commissioners; and (3) the allegations with reference to interference in the canal traffic, and the interests therein of the petitioners, were not such as entitled them to be heard; (4) no sufficient case of competition or interference with competition was disclosed; and (5) there were no allegations entitling petitioners to a hearing according to practice.

Cripps, Q.C. (for the Severn Commissioners, &c.): The Hereford and Gloucester canal is a navigation running into the Severn, and traffic upon it is continually passing to and from the Severn. The Commissioners accordingly have the greatest interest in the traffic on the canal being properly developed, and the canal company have an equal interest in the navigation of the Severn. Under the Act of 1842 the Severn is governed by thirty Commissioners, one of whom is elected by the Hereford canal company, and last year, when the Severn Commissioners applied for an Act,

the right of that company to oppose was admitted. If this were a railway amalgamation bill, and the Hereford canal were railway A., communicating with and interchanging traffic with railway B. (the river Severn), and if railway A. proposed amalgamation with some other large company, railway B. would, as a matter of course, have a right to be heard. The fact that this is a canal instead of a railway makes no difference. If there be any difference it is in our favour, for a railway, though absorbed, would still continue to be worked as a railway, whereas, in the case of a canal, it might be the interest of the railway not to develop the traffic of the water communication. At present a considerable amount of traffic passes over the Hereford canal into and up the Severn to Stourport, where it enters the Stafford canal, and is forwarded to the manufacturing districts. Any obstruction to a free use and navigation of the Hereford canal tends to diminish this traffic, and so to injure the receipts of both petitioners. Moreover, the removal of this link in the chain of navigation would destroy the existing current of traffic and of competition between land and water carriage, and would leave to the trading public only such means of transmitting merchandise as may suit the interests of railway companies. The Great Western have already a competing line of railway from Gloucester to Hereford, and their interests may lead them to divert traffic from the canal to their railway, and with that view to allow the canal to fall out of repair, or purposely to increase the tolls taken. Applications have been made before for power to convert this canal into a railway, but hitherto without success.

Mr. RICKARDS: How far up the Severn is the entrance to the Stafford and Worcester canal from the termination of the Hereford and Gloucester canal?

Cripps: It is about 45 miles higher up, but the water-route is continuous. We claim a hearing generally, though we may probably content ourselves with clauses for the purpose of keeping the canal open. What we desire is that the water communication should be kept free and with moderate tolls, so as to enable the navigation to compete with the railway. The Severn Commissioners also claim a *locus standi* in respect of the alteration in their constitution which will be the result of the present bill.

Mercuether, Q.C. (for promoters): We are willing to concede a limited *locus standi* on that ground to the Severn Commissioners.

Cripps: The *locus standi* must be general, for the alteration is not affected by any particular clause, but by the general result of the bill. When the canal is transferred to the Great Western, that company will have the appointment of four Severn Commissioners instead of three, as at present.

Mercuether: There are thirty Commissioners altogether.

Cripps: That is true, but the four Great Western directors will be men conversant with business, who will make a point of attending, whereas the remainder of the thirty will be persons living in various directions, and having no personal interest in the matter, so that these

our may constitute an actual majority of some particular meeting.

Merewether: This bill is practically one for confirming an agreement made in 1862, under which the Great Western company have been working the canal for the last seven years.

Cripps: There is no agreement scheduled to the bill, nor any allusion to one.

Merewether: I am prepared to put in the agreement if necessary.

Cripps: I do not dispute that there may be an agreement, but it is not set out in the bill; accordingly it cannot be relied on.

Merewether: The petitioners merely say that the canal may be stopped up, but this has not been done hitherto, though the Great Western have been working it for seven years. The Severn Commissioners claim to be heard on the ground of apprehended injury to tolls, but by a clause in the Oxford, Worcester, and Wolverhampton Act, 1845, that line, now in our hands, is bound to make the tolls good upon the Severn whenever they fall short of £14,000 a year. Last year we paid £6,000 under that clause. Is it likely we shall stop up the canal, or do anything to increase the deficiency? Except that the canal starts from Gloucester and goes to Hereford, it has nothing in common with the railway; it goes by a different valley, and depends upon local traffic. Former decisions of the Court are opposed to the claim of the petitioners (*Ogmores Valley and Ely Valley Extension Bill*, 1865, 12 L. T. Rep. (N. S.) 157; *Smeth*. 139; *Fawcett*, 22). The conversion of a broad-gauge into a narrow-gauge railway presents a physical obstruction to traffic, and inflicts an injury more direct and tangible than the transfer of a canal to a railway, or the purely speculative loss of tolls. But there is a still stronger decision in our favour (*Brecon and Merthyr Tydfil Junction (Amalgamation, &c.) Bill*, 1865, 12 L. T. Rep. (N. S.) 358; *Smeth*. 141; *Fawcett*, 49).

Mr. RICKARDS: All these questions of competition are questions of discretion. Moreover, they all depend on the particular circumstances of each case; and unless you have the *pro*s and *con*s very fully before you it is not easy to see the grounds of the decision. They are really all individual cases.

Merewether: Power to appoint a fourth Commissioner of the Severn will not enable us to injure anybody; in any case we should injure ourselves first, having to make good this £14,000.

The *Locus Standi* of the Petitioners was Allowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dorington & Co.*

(2) THE GLOUCESTER AND BERKELEY CANAL COMPANY.

Canal Transfer—Distinction as to Ship Canal—Competition.

Against the same bill, transferring the Hereford Canal to a railway company, the Gloucester-

shire Canal Company petitioned on like grounds of apprehended injury to the system of inland water communication. Theirs, however, was a ship canal; and it was denied that they would be affected in the same way as the last petitioners:

Held, that they had no *locus standi*.

These petitioners were owners of the Gloucester and Berkeley canal, which affords a means of navigation for sea-going ships of large burden, and other vessels, from Sharpness Point, on the River Severn, to the docks and adjacent warehouses in the city of Gloucester. They likewise expressed apprehension of injury to the system of inland water communication from the proposed transfer of the Hereford canal to the Great Western railway.

Their *locus standi* was objected to because (1) the allegations as to the possible creation of a monopoly, to the prejudice of the petitioners, even if such allegations were well-founded, did not entitle them to be heard; (2) no sufficient case of competition or interference with competition was disclosed; (3) there was no allegation upon which, according to practice, the petitioners could be heard.

Gadsden (for petitioners): We adopt the argument already urged as to the necessity of keeping open the water communication. From the city of Gloucester a large traffic is annually carried on with the more inland districts by means of the River Severn, and the canals and navigations communicating with it. The interests of all these navigations have been treated as identical in negotiations and arrangements from time to time entered into, for modifying their respective tolls, and for accommodating the various requirements of trade. By an Act passed last session we also engaged to contribute further large sums towards the improvement and maintenance of the navigation of the River Severn and to facilitate traffic between our canal and wharves at Gloucester. Considerable traffic either goes to or is drawn from the district traversed by the Hereford canal; and our interests and those of the public trading on that canal will be very much prejudiced if it should fall into hands which will not keep it in efficient working order or will impose prohibitory tolls upon its use. The Great Western railway company already possess a competing railway running from the docks and serving the same districts as the Hereford canal. Accordingly, by the transfer to them of this canal a monopoly in the carriage of traffic between Gloucester, Hereford, and the intermediate districts will be created, and the existing competition between the two modes of conveyance will be destroyed. Apart from the question of competition, the sum of money contributed by the petitioners towards the improvement of the Severn is secured by mortgages on the tolls. And as the tendency of the bill is to diminish the receipts, and thereby to lessen our security, we claim a *locus standi*. The effect of the present scheme will be to enable the Great Western to take the whole

of the traffic from the Severn and to carry it parallel with the Severn by the South Wales line to Cardiff, and ship it there, or at any other port in South Wales.

Merewether, Q.C. (for promoters): The Gloucester and Berkeley canal is a ship canal which will not be traversed by any of the Hereford canal traffic. The moment ships get out of the Berkeley canal into the Severn they will have their free route by that river to any place with which the Severn communicates. Suppose the Hereford canal is actually stopped up, the Berkeley canal cannot sustain the slightest detriment; there is, however, no intention to do this.

The *Locus Standi* of the petitioners was *Disallowed*.

Agents for Petitioners, *Hayes, Twisslen, and Parker.*

TOTTENHAM & HAMPSTEAD JUNCTION RAILWAY BILL.

14th March, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.*)

Petitions of (1) VESTRY OF ST. PANCRAS; (2) EDWARD HALL; (3) JOSEPH SALTER; (4) DEVISEES OF THE WILL OF REV. E. CHAPLIN.

Railway—Abandonment—Deposit—Liberation of—Unpaid Landowners—Judgment-Creditors—Vestry—Contract with—Devisees—Signatures of some only—Practice.

A bill promoted by a Railway Company to authorise the abandonment of part of their undertaking, and the release from Chancery of the deposit-money, was opposed by four sets of petitioners: (1) a Vestry who had constructed out of rates a sewer for which the company were bound to pay; (2) an unpaid vendor of land comprised in the undertaking to be abandoned; (3) another unpaid vendor of land, the contract with whom was based partly on withdrawal of opposition to the original Act; and (4) two out of three devisees of a deceased landowner with whom an agreement for purchase had been entered into. Petitioners 1, 2, and 3 were also holders of unsatisfied judgments against the company. Promoters argued that the petitioners were all creditors, and were seeking preferential rights over the deposit-money, when liberated, to the prejudice of other creditors: *Held*, that none of the petitioners had a *locus standi*.

The Tottenham and Hampstead Junction railway company were incorporated in 1862, and further Acts relating to the company were passed in 1864 and 1865. By the last Act certain substituted lines were authorised, and (by sec. 48) it was provided that sec. 29 of the Act of 1864 relating to a sum of £8,000—portion of the Parliamentary deposit of £28,000 in respect of the Act of 1864—should be read and have effect as applying to the railways authorised by the Act of 1865. By the present bill it was proposed to abandon the construction of the railways authorised by the Act of 1865, to repeal both the sections named in the Acts of 1864 and 1865, and to enact instead that the Court of Chancery, on application by the company, should order that the sum of £8,000, and the interest or dividends thereon, should be paid or transferred to them or to such persons as they should appoint. The bill contained the usual clauses for the protection of creditors.

The *locus standi* of the St. Pancras Vestry was objected to because (1) the petition related to a debt of £1,200 of the Company, for which judgment had been signed, but there was no allegation that any rights of the petitioners under the judgment or otherwise would be affected by the bill; (2) the petitioners, as creditors, were not entitled to be heard; (3) there was no allegation on which they could claim to be heard according to practice.

The *locus standi* of Edward Hall and that of Joseph Salter was objected to on grounds precisely similar.

The *locus standi* of the fourth set of petitioners was objected to because (1) they were not owners of any lands and houses authorised to be taken for the purposes of the railways sought to be abandoned, but were devisees in trust, and according to practice the petition should have been signed by all three devisees; (2) even if they were the owners of any such lands or houses, they were not entitled to be heard against the preamble, but only (if at all) as to the insufficiency of protection afforded by clauses 4 and 5; (3) there was no allegation entitling them, according to practice, to be heard.

Shrubsole (Parliamentary agent, for the St. Pancras vestry): Under the Act of 1865 the company were bound, at their own expense, to construct a sewer along the Kentish Town road subject to the approval of the vestry of St. Pancras; and general powers of agreement were given by the Act, under which the vestry made the sewer themselves on promise of repayment, charging the expense to the railway company. The total expenditure for this purpose out of the rates of the parish exceeded £1,200. Repeated applications were made to the company since 1867 for payment, but without effect, and on the 8th May, 1868, an order to sign judgment for £1,231 was obtained, and judgment was signed accordingly; no part of the debt, however, has since been paid, and no provision respecting it appears in the bill. Unless, therefore, the vestry get a clause giving them a lien over the £8,000 deposit, they have no security that they will be paid, although this deposit is liable to be forfeited if the line be

not made. Without the clause we ask for, the parish will lose £1,200 out of the rates.

Mr. RICKARDS: There may be other creditors to be paid out of this £8,000.

Shrubsole: They too should equally be heard before the Committee, who will take all the circumstances into consideration, and allot us our fair proportion.

Lewin (Parliamentary agent, for Edward Hall): Petitioner is the executor of Elizabeth Ellem, who was the lessee of a house, buildings, and gardens proposed to be taken under the Act of 1865. The price of the lands was duly ascertained, and on 1st July, 1868, judgment was recovered against the company for £336. Elizabeth Ellem in her lifetime made frequent ineffectual endeavours to enforce this claim, but the line being worked by the Midland and Great Eastern companies, there was nothing which could be taken in execution, except the rails. She died in January, 1869, and the petitioner now submits that this sum of £8,000 should remain in the court of Chancery for the security of the unpaid vendors of land, or should be applied in payment of their claims before any part of the money is repaid to the company, or before the company are allowed to abandon their undertaking. If control be not retained over this fund, section 5 of the bill, which purports to give compensation to owners or occupiers of lands, for injury done to them by non-completion of the purchase, will be rendered nugatory, as the company have no other assets than this £8,000.

Bidler (for Joseph Salter): The petitioner is the lessee of certain building lands at Kentish Town, intersected by the lines of railway authorised by the Act of 1865, which he accordingly opposed whilst the bill was pending. The company agreed, if he would withdraw his opposition, to purchase, within three months from the passing of the Act, certain of his lands for £6,730; and in pursuance of that agreement, on the 20th January, 1866, they paid him £3,500 on account. Subsequently, the company under their Act, took other portions of the petitioner's lands, the value of which was assessed by the arbitrator on the 13th of March, 1867, at £799. On the 24th July, 1867, the petitioner recovered judgment against the Company for £5,127 in all, but this amount with interest still remains unsatisfied. The bill now proposes to relieve the Company from their obligation to fulfil any contracts into which they may have entered for the purchase of lands required for the purpose of the railways authorised in 1865. Such a power, if granted, will be productive of great hardship and injustice. The promoters by their notice of objections, seem to suppose that the petitioner puts himself on the footing of a judgment creditor; whereas the point of his petition is that he is in the position of a person having a contract with the Company for the sale of his land. As one step in the enforcement of that contract, he has recovered judgment, upon which hitherto he has not been able to obtain payment, but he is not claiming to be heard merely as a creditor. This, therefore, is a case perfectly distinct from those to which the notice of objections points, where landowners,

standing in the position of creditors from having received notice to treat, have been refused a *locus* against bills for extension of time (Cliff. & Steph. *Practice*, 32). The petitioner alleges that the promoters are going to annul his contract, not that they are going to extend the time for the completion of their railways. As to the technical objection that the petition does not show that the rights of the petitioner, under the judgment or otherwise, will be affected or dealt with under the bill, the petition does state the fact of an existing contract with the company. And though it does not say specifically that the bill will relieve the company from the obligation to fulfil that contract, it alleges that the bill will relieve them from obligation to fulfil their agreements generally. Where there are two parties to a contract, and one applies to Parliament for power to annul or vary that contract, whether it is proposed to give compensation or not, as a general rule the other party has a right to be heard.

Coates (Parliamentary agent, for devisees of Rev. E. Chaplin): The petitioners are owners of copyhold lands and houses at Fitzroy Place, Kentish Town, authorised to be taken by the Act of 1865. On the 12th December, 1867, the company entered into an agreement with them to purchase all their interest in these premises (subject to a leasehold term), for £4,492, and to pay the purchase money without interest, on the 26th December, 1867. The company, however, have not since completed the purchase, or paid any portion of the money. The company also entered into an agreement with the lessee of the premises for the purchase of her interest, and some of the tenements being thereupon vacated, she has been unable, in consequence of the agreement, to relet them, and the houses have fallen out of repair to such an extent, that they can only be put into proper condition again by the expenditure of a large sum of money. It is now proposed by the bill (clause 5) that "where before the passing of this Act, any contract may have been entered into or notice given by the company for the purchasing of any land for the purposes of, or in relation to, any portion of the railways authorised to be abandoned by this Act, full compensation shall be made by the company to the owners and occupiers, or other persons interested in such lands, for all injury or damage sustained by them respectively, by reason of the purchase not being completed pursuant to the contract or notice, and the amount and application of the compensation shall be determined in manner provided by 'The Lands Clauses Consolidation Act, 1845,' for determining the amount and application of compensation paid on lands taken under the provisions thereof." We maintain that it would be unjust to us to release the company from the contracts they have entered into, and that nothing less than the full completion of those contracts, together with the payment by the company of all expenses which have been incurred, should now be permitted.

Mr. RICKARDS: Is the effect of the bill as regards the lands contracted for, to throw them back into the hands of the vendors?

Coates: If it means anything it means that. The bill contains no provision that the promoters shall keep their contract and pay the petitioners the price they agreed to pay, but it is proposed that they should pay compensation for breaking their bargain. It is a well-established principle that if a bill will leave a person in a worse position than it found him in he has a right to be heard against that bill, if he puts himself technically in a position to be heard, and if not a constituent member of some body that ought properly to represent him. It is manifest that the bill alters the position of the petitioners for the worse, inasmuch as it impliedly, if not expressly, abrogates the contract made with them, and, instead of giving them £4,492, proposes to give them what the arbitrators may deem sufficient. Hence their position is varied, and it may be greatly deteriorated by the bill.

Mr. RICKARDS: What other remedy can the petitioners require from the Company than full compensation for injury sustained by the non-fulfilment of the contract?

Coates: The petitioners are entitled to demand that their contract shall be fulfilled. Whether they are reasonable, or unreasonable, in making such a demand is no question for this Court. And if the persons with whom the petitioners have a contract ask by the bill to say "you shall have compensation instead of the fulfilment of your contract," the petitioners have a right to be heard upon that point. It is objected that we are not the owners of the property, and that all the devisees ought to have signed. I admit, as a general rule, that all the devisees in trust under a will ought to sign a petition, but I deny that the rule is universal. I admit also that trustees must sign in some official form to entitle them to be heard. But in the case of road trustees, supposing the clerk to the road trustees signed a petition on behalf of the body, the petition stating that it was signed by order of the trustees, that would, I submit, be a good signature. So in the case of drainage commissioners, it is not necessary for all the commissioners to sign a petition, it is enough if the petition is signed by the statutory quorum of commissioners. In the case of the Duke of Bridgewater's trustees, where, by the will of the Duke of Bridgewater, one of the trustees is recognised as managing superintendent, the signature of the superintendent has always been admitted as the signature of the Duke of Bridgewater's trustees. In all cases, supposing it to be manifest that the presentation of the petition was the act of the persons managing the particular property, it was in the discretion of the Committee in former days, and it is now for this Court, to determine whether the petitioners ought to be heard or not. There is no rigid or absolute rule on the subject. There is no concealment whatever as to the facts: the petition is headed "The humble petition of Edward Holroyd, Esq., who, with the Rev. Samuel Hands Field and the Right Hon. Acton Smee Ayrton, M.P., are the devisees in trust under the wills of the Rev. Edward Chaplin, and of the said Acton Smee Ayrton," and it bears the signatures of Mr. Holroyd and Mr. Ayrton. The Rev. Hands Field is a gentleman living in Cheshire,

and not taking much interest in the management of the trust; but to prove that all the trustees concur in the petition, though only two have formally signed, I hand in the following letter from Mr. Field:—

"Tottenham and Hampstead Junction Railway Bill."

"I, the undersigned, the Rev. Samuel Hands Field, one of the devisees under the will of the Rev. Edward Chaplin, hereby express my concurrence in the petition presented by my co-devisees to the House of Commons, against the above-named bill, and beg leave to add that the general and more active management of the property affected by the said bill has been in the hands of my said co-devisees, E. Holroyd, Esq., and the Right Hon. Acton S. Ayrton.

"Dated this 12th day of March, 1870.

"SAMUEL HANDS FIELD."

Round (for promoters): The bill is only an ordinary abandonment bill, containing the usual clause for compensation to landowners, and nothing exceptional is introduced into it either with regard to the company, the public, or the landowners. The compensation clause is to meet the case where the purchase has not been completed pursuant to contract or notice. The petitioners do not wish that the company should be required to fulfil their contract or they would have petitioned against the abandonment, which not one of them do.

Mr. RICKARDS: They petition against the whole bill.

Round: You will find that what they all ask for is, not that the line shall be made, but that special clauses shall be inserted for their individual benefit, giving them a claim on this £8,000 the moment the abandonment has been authorised.

Bidder: The petitioners allege that the company have made a contract with them to buy their land, and they seek to hold them to their contract, and decline the compensation offered.

Round: The only use we can make of the land is for the purpose of a railway, which is now proposed to be abandoned. This sum of £8,000, on the other hand, when returned to the company will become an asset in their hands available for the purpose of satisfying the judgment debts, and will then exist in the form of cash over which the company will have control, instead of being a deposit in the court of Chancery. These petitioners are making an undue preferential claim, and asking to have the £8,000 divided among themselves to the prejudice of every other creditor. They have no greater case of hardship than all the other creditors of the company. The case would have been different if the company had been coming for an Arrangement Bill, as in the case of the London, Chatham, and Dover company, where its utter inability to deal with its creditors and unpaid vendors was confessed. The petitioners here have elected to take their remedy at law. There is no question as to the amount to be paid, the whole thing having become the subject of an award, and three of the petitioners having got judgment.

At the instance of the debenture holders, a receiver has been appointed. When there is a surplus, the receiver will have to deal with it according to the directions of the court; and before those directions are given, all the petitioners will have an opportunity of appearing and seeing that the money is not improperly dealt with as regards them. Analogous to this case are extension of time bills, against which a *locus standi* has been refused to persons on whom a notice to treat had been served, who were therefore, like the petitioners in this case, creditors. As to the circumstance, that in this case the petitioners have got a judgment, that does not alter their position as creditors, it only puts them in a better position. It will be hardly consistent with former decisions of the Court if these petitioners are heard (Cliff & Steph. *Practice*, 32). The bill does not propose to deprive them of their rights under their judgments, and it contains no direct provisions to affect their position as creditors. The £8,000 has been deposited merely as a security for the completion of the line, not in any way for the benefit of the landowners; though as to deposits made under more recent Standing Orders, I admit there might be a difference. As to the petition of the devisees, it ought to have been stated that the two who signed do so on behalf of themselves and the other devisee: from anything that appears in the petition itself the third party may not assent to it.

Mr. RICKARDS: A case is reported where only one trustee signed (Smethurst, p. 97).

Round: In any case, the devisees will be at liberty to pursue their legal remedies, whether the bill passes or not.

The COURT (after deliberation): The *locus standi* of all the petitioners is *Disallowed*.

Agents for bill, *Toogood*.

Agents for St. Pancras Vestry, and for the Devisees, *Dyson & Co.*

Agent for E. Hall, *Lewin*.

Agents for J. Salter, *Langley & Gibbon*.

CALEDONIAN AND GLASGOW AND SOUTH WESTERN RAILWAY COMPANIES' BILL.

18th March, 1870.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS).

Petition of NORTH BRITISH RAILWAY COMPANY.

Canal—Second Transfer of—Joint Vesting in two Railway Companies—Former Opposition by Competing Railway—Withdrawal of—Agreement.

A bill was jointly promoted to vest in the Glasgow and South Western and Caledonian companies a canal, which by an Act of 1869

had been vested in the Glasgow and South Western singly. The North British, whose railway terminates on the north side of the Clyde, but through the Glasgow City Union line, of which the North British are joint owners, is connected with the railways on the south side of the river, and so with the canal, opposed the bill of 1869, but withdrew their opposition on condition of a working agreement being entered into by which their goods traffic over the canal would be carried at reduced rates. They also opposed the present bill on the ground that the Caledonian, as a competing company, might influence the management of the canal to their prejudice, and so as to divert traffic from the North British system, declaring that they would not have withdrawn their opposition to the bill of 1869 had they known that it was then intended to vest the canal in the two promoting companies. The promoters urged, on the other hand, that the North British had no such connection with the canal as entitled them to be heard; that their interest in the connecting link of communication, the Glasgow City Union line, gave them no such title; that the traffic agreement was not interfered with by the bill; and that the proper persons to petition were the Glasgow City Union Company:

Held, that the petitioners had a *locus standi*.

This was a bill to vest in the Caledonian Railway, jointly with the Glasgow and South Western, the Glasgow, Paisley, and Johnstone Canal.

The petitioners alleged that the Edinburgh and Glasgow (North British) railway terminated on the north side of Glasgow, but a line was in course of construction called the "Glasgow City Union" (of which the North British were half owners with the Glasgow and South Western) connecting the Edinburgh and Glasgow with the railways on the south side of the Clyde; that last session the Glasgow and South Western promoted a bill enabling them to become possessors of the Glasgow, Paisley, and Johnstone Canal, against which the North British petitioned; that the Glasgow and South Western at first objected to the *locus standi* of the North British, but withdrew their objections upon an agreement being entered into which secured to the North British, for a period of 15 years, the transit of their traffic at reduced rates over certain portions of the canal, which accordingly became vested in the Glasgow and South Western; that it now appeared that the Glasgow and South Western had made, or were in course of making, an agreement with the Caledonian Company to give them a joint interest in the canal, at the time they were negotiating with the petitioners, but this was not then disclosed

to the petitioners otherwise they would have continued their opposition to the Act of last session; that the canal was a means for conveying goods traffic between Johnstone, Paisley, and other manufacturing places in the county of Renfrew, and the city of Glasgow, and points beyond Glasgow through and over the petitioners' railways, and was used by the petitioners and the traders on their railways for the conveyance of traffic passing over the North British system by or through Glasgow to or from the places situated on the canal; that on the opening of the Glasgow Union railway the petitioners would have still greater facilities for using the canal; that previous to the canal being acquired by the Glasgow and South Western it formed an independent communication for traffic, and although the interests of that company as joint owners of the railway to Paisley were adverse to the free use of the canal by the petitioners, the general interests of the two companies were not antagonistic, and the petitioners therefore considered that the agreement they had entered into would afford them reasonable protection; that the proposed transfer of a joint interest in the canal to the Caledonian would much more seriously prejudice the petitioners' interests, the Caledonian being competitors for the conveyance of railway traffic from almost every important point on the petitioners' system to and from Paisley and other places situated on or near the canal, and being also joint owners with the Glasgow and South Western of the only railway which connected Glasgow and Paisley and places beyond, whilst the petitioners had only limited and imperfect powers over that line; that the Caledonian did not seek possession of the canal for the purpose of using it, but to exclude competition and prevent its use by the petitioners and the traders thereon, so as to force the traffic to pass over their own railway routes; that it was essential to the free passage of the petitioners' traffic that the management of the canal should not be placed under the control of a rival company, and if the bill were to be sanctioned the petitioners' power to compete for the traffic of Renfrewshire with all parts of the country would be seriously prejudiced; and lastly, that by clause 13 of the bill it was provided that the Caledonian and Glasgow and South Western Companies might make and carry into effect agreements, not only with respect to all or any of the purposes of the bill or for giving effect thereto, but also with respect to the use of the canal, and the conduct and management of traffic thereon, and with respect to the tolls, rates, and charges to be levied upon and in respect thereof.

The *locus standi* of the petitioners was objected to because, (1) they had no statutory rights in respect of the canal which would entitle them to be heard; (2) no part of their railways or other works joined or was directly connected with any part of the canal; (3) they were not themselves traders on the canal, and even if they were, being only one of many traders, they would not be entitled to be heard as such; (4) the only interest in the canal alleged in the petition was founded upon an agreement between the petitioners and the Glas-

gow and South Western, but the bill did not repeal or alter that agreement; (5) the *locus standi* of the petitioners against the bill, in respect of which they alleged that such agreement was made, was objected to, and the petitioners withdrew their opposition without having established their right to be heard, and they had in reality no right to be heard against that bill; (6) no such question of competition, or prevention of, or interference with competition arising under the bill was raised as entitled them to be heard; (7) there was no sufficient allegation according to practice.

Mr. RICKARDS: Does the bill affect the agreement between the North British and the Glasgow and South Western?

Cripps, Q.C. (for promoters): It does not.

Clerk, Q.C. (for petitioners): Though it does not in terms repeal our agreement, it gives the Caledonian power to make and carry into effect agreements which may be adverse to our interests. The Glasgow and South Western have no interest whatever to the east of Glasgow; but the Caledonian will have an interest in diverting traffic, which would otherwise go from the canal on to the North British system by means of the Glasgow City Union. We did not persist in opposing the arrangements made last year, because the Glasgow and South Western do not really compete with us; but by this bill the joint committee of the Caledonian and the Glasgow and South Western, under the influence of the former company, may so manage the traffic that the agreement will be virtually set aside. The legislature has always been opposed to the grant of powers to railway companies to absorb canals, where the interests of other companies may be affected by such absorption. The North British are the principal traders on this canal, and receive the bulk of the traffic carried upon it. In answer to the second objection we say that by the construction of the City Union line the North British will be brought into direct communication with the canal. As to the third objection, the petition shows that the canal is used by the North British company and the traders on their railway, for goods traffic passing through Glasgow from places on the canal. We are therefore representatives of the trade.

Cripps: Last year, when it turned out that all the North British wanted was a traffic agreement, the Glasgow and South Western did not think it worth while to contest their *locus standi*, but the opposition to it was not withdrawn till all the matters at issue were settled, and the Glasgow and South Western never conceded that the petitioners had a *locus standi* against that bill. This canal is one to the south-west of Glasgow, running for a great part of its course nearly parallel to a joint line of the Caledonian and Glasgow and South Western. The only railways in that district are the Glasgow and South Western and the Caledonian. The North British come no nearer than their terminus at the north-eastern end of Glasgow, the whole city of Glasgow being interposed between them and the canal. No doubt, by means of the Glasgow City Union railway, there will be a communication between the North British and the Glasgow

and South Western; and if the Glasgow City Union had asked to be heard in opposition to this bill, their railway being one which will closely impinge on the spot in question, they might probably have had a *locus standi*. But the Glasgow City Union as a corporation do not petition; and the North British, as one of the component parts of that corporation, cannot be heard in respect of anything in which the Glasgow City Union may be interested. They are owners of a railway having another railway interposed between them and the canal, and they are only interested in the matter through the intervention of that other railway, which does not petition. The agreement is a mere traffic agreement, with which the bill in no way interferes. Whatever rights exist under it can be enforced by the North British in a court of law. The bill does not seek to lessen or to increase those rights. Even if the North British are the largest traders on the canal, they are only single traders. And as to the alleged competition, the two companies do not compete at all.

Locus standi Allowed.

Agents for Bill, *Grahames & Wardlaw.*

Agents for Petitioners, *Loch & Maclaurin.*

CALEDONIAN RAILWAY (TAY FERRIES AND LAND AT DUNDEE) BILL.

18th March, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.*)

Petition of NORTH BRITISH RAILWAY COMPANY.

Land-Owners—Tenants at Will—Joint Occupancy by Competing Railways—Rival Bills—The "Post" Case.

By an omnibus bill, the main object of which was to acquire a ferry, the Caledonian railway company sought power to take land which they held jointly with the North British railway company under the harbour trustees of Dundee. Part of the land had also been scheduled by the North British in a bill which they were promoting, and the latter company now sought for a general *locus standi* against the bill of the Caledonian on the ground of the joint occupancy. It was not disputed that the North British company, as well as the Caledonian, were tenants-at-will of the land on which they founded their claim, and removable at a month's notice by the harbour board, whose *locus standi* as owners of the land was not disputed:

Held, nevertheless, following the rule laid down in "the Post case" (Cliff. & Steph. 62), that

the terms of occupancy or extent of interest made no difference in the right of the petitioners as landowners to be heard against the whole bill.

This was a bill "for vesting in the Caledonian railway company the ferry across the Tay now managed by them, and continuing the term of the Acts relating thereto; for enabling that company to construct a pier at Dundee in connection therewith, and to acquire land at Dundee adjoining their Dundee and Arbroath line; and for other purposes."

The petition alleged (*inter alia*) that one of the objects of the bill was to enable the Caledonian railway company to acquire a piece of ground belonging to the trustees of the harbour of Dundee, at the back of or near to the Camperdown dock; that this ground was let to the petitioners by the harbour trustees in 1863, and had since been jointly occupied by the petitioners and the Caledonian company and their predecessors; that the rails and sidings laid down on this piece of ground were the property partly of the petitioners and partly of the Caledonian company, portion of the ground being used as a coal station by petitioners, who, by means of the lines passing through it, had their sole access to and from their present mineral yard across Dock Street; that this ground was absolutely necessary for the proper station accommodation of their traffic at Dundee, and part of it was also required and had been scheduled for the purposes of a bill promoted by the petitioners, and now pending, to authorise them to construct a bridge across the Tay, with railways to connect the railways north and south of the Tay by means of that bridge; that the power sought by the Caledonian company, if exercised, would enable them to obstruct the petitioners' traffic, and in a large degree destroy their power to compete for traffic over the Dundee and Arbroath line, and would otherwise cause them great inconvenience; and that the acquisition of the ground by the Caledonian company was also incompatible with the right sought by the petitioners in the Tay Bridge Bill, which the Caledonian company were under obligation not to oppose.

The *locus standi* of the petitioners was objected to (*inter alia*), because they were not proprietors or lessees of any lands sought to be taken under the powers of the bill, and their joint occupation of a portion of such lands was that of tenants at will, and without statutory powers, and they were therefore not entitled to be heard.

Clerk, Q.C. (for petitioners): The North British company have received notice in respect of their occupancy of this land.

The COURT: Do the promoters dispute that the North British have a *locus standi* as occupiers?

Mundell, Q.C. (for promoters): The North British are merely tenants at will, and while I admit that they would have a *locus standi* in respect of the ground proposed to be taken by the Caledonian company, their *locus standi* ought to be limited to that ground of objection.

Clerk: As occupiers the North British are entitled to a general *locus standi*, and the fact of their being tenants at will makes no difference whatever.

The COURT: We will hear the promoters on the question of the right of the North British to a general *locus standi* in respect of their being occupiers of the land in question.

Mundell: For the purpose of making the station, part of the ground in question is certainly scheduled within the limits of deviation, but the minutes of the Harbour Board show that the land is held "during the pleasure of the trustees only," and upon condition that each of the railway companies "shall, at the option of the trustees, be bound to remove from the said ground occupied by them respectively within one month after notice to that effect shall have been addressed to them," so that they are tenants at will, and removable at a month's notice. The bill is a ferry bill, and not a railway bill. I am aware that in the *London and North Western Bill*, 1868 (Cliff. & Steph. 62), the Lancashire and Yorkshire Company were allowed a *locus standi* as landowners against the whole bill; but this is not a railway bill, against which, under S. O. 131, a railway company whose land is taken is allowed a general *locus standi*. The main object of the bill is to acquire a ferry.

Mr. RICKARDS: It is a bill which has been referred to the General Committee on Railways, and is promoted by a railway company.

Clerk: Every railway company's bill is a railway bill.

Mundell: The Referees will not extend the principle of allowing to occupiers a general *locus standi* in every possible case of occupancy, however small the interest may be. A weekly tenant of a house or a lodger, for instance, might, *ex abundante cautela*, have a notice served on him, but he would not be entitled to be heard. The Harbour Trustees are opposing the bill as owners of the land, and their *locus standi* is not disputed.

The *locus standi* of the petitioners was allowed.

Agents for Bill, *Grahames and Wardlaw*.

Agents for Petitioners, *Sherwood & Co.*

GREAT EASTERN RAILWAY (GENERAL POWERS) BILL.

18th March, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS*).

Petition of THE GREAT NORTHERN RAILWAY COMPANY.

Railways—Informal Purchase of Short Line from Independent Company—Proposed Confirmation—Abandonment—Expiring Agreement—Competition.

A bill promoted by a railway company to sanc-

tion the purchase of a short line, of which without Parliamentary sanction they had already acquired the greater portion of the capital, was opposed by another railway company working the line under an agreement, which, however, was on the point of expiring. The petitioning railway was the only one that the short line joined; for though an authorised line, if made, would have connected it with the system of the purchasing company, the bill empowered the promoters to abandon this authorised line. It was contended that the petitioners had no sufficient interest either in the line to be purchased, or in that to be abandoned, entitling them to appear:

Held, however, that, upon the facts disclosed, they had a *locus standi*.

This was a bill "to confer various powers upon the Great Eastern Railway Company, with respect to the Ramsey Railway, the Ramsey Branch of the said Company," and other railways; and for other purposes. Clause 4 proposed to vest in the promoters the Ramsey Railway, i.e. a short line issuing from the Great Northern Railway, at Holme, in Huntingdonshire. This line belonged to an independent company, but had been worked since 1863 by the Great Northern, under an agreement now upon the point of expiring. The petitioners alleged that in 1864, without their concurrence, some principal shareholders in the Ramsey Railway bargained with the directors of the Great Eastern Company for the sale of the shares in the Ramsey Railway to the Great Eastern; and the bulk of the shares were accordingly sold at par for a sum of about £40,000 without the authority of Parliament; the preamble of the present bill affirming that the Great Eastern Company "some time since purchased the Ramsey Railway." Petitioners complained of the injustice of the transfer, without notice, to a company which was competing with them for traffic, of an undertaking concerning which they were, by agreement, still liable to serious responsibilities. Two similar attempts to obtain a transfer of the Ramsey Railway had been made, without success, by the Great Eastern in 1865 and 1867; and the petitioners alleged that the present proceedings were inconsistent with good faith, and ought not to receive the sanction of Parliament. One of the pretexts assigned in 1867 for these proposals was, that Parliament had authorised the Great Eastern to construct an extension of the Ramsey Railway to join their own system; whereas by the present bill they sought to be relieved from making their extension known as "the Ramsey Branch."

The *locus standi* of the petitioners was objected to because (1) they had no such interest as entitled them to be heard, either as to the transfer of the Ramsey Railway or

the abandonment of the Ramsey Branch; (2) the bill in no way affected the agreement between the Ramsey Railway and the petitioners, but on that point was expressly made subject to the agreement, and without prejudice to the rights or privileges of the petitioners; (3) they had no right, at law or otherwise, to require a fresh agreement, or the renewal of the existing agreement, or to exercise any powers in reference to the Ramsey Railway, after the termination of that agreement; nor had they any other interest entitling them, according to practice, to be heard against the transfer; (4) they were not interested as landowners or otherwise, in the construction of the Ramsey Branch, and had no interest entitling them to be heard against its abandonment.

Cripps, Q.C. (for petitioners): This is a bill to amalgamate the Ramsey Railway with the Great Eastern, and to dissolve the Ramsey Company. At present the Ramsey Railway is, in fact, a branch of the Great Northern, worked by the Great Northern under an existing agreement; and it is the only line with which the Ramsey Railway has any communication. At the other end of the Ramsey Railway, there is no doubt, an authorised line, the Ramsey Branch, which would connect it with the Great Eastern system, but by this bill it is proposed to abandon the Ramsey Branch, so that ours will still remain the only line with which the Ramsey Railway has any connection. As an independent Company, the Ramsey Railway has every inducement to interchange traffic with us. But the Great Eastern, our rivals, are seeking to alter that state of things, and to make the Ramsey Railway a part of the Great Eastern, when it may, and probably will be the interest of the Great Eastern no longer to interchange traffic with us.

Mr. RICKARDS: Whilst the bill proposes to vest the Ramsey Railway in the Great Eastern, it also proposes to abandon the Great Eastern Company's Ramsey Branch?

Cripps: Yes; but if we are not allowed to appear, the Great Eastern may strike out that abandonment clause; and then it would be the interest of the Great Eastern to divert all the traffic by means of the Ramsey Branch on to their own railway. If, again, the abandonment clause remains, and the Ramsey Branch is not made, the Ramsey Railway will pass into the hands of the Great Eastern, though it has no physical connection with any railway except the Great Northern. Whatever is done by the committee with this abandonment clause, we should be present to ask for running powers. The *Caterham* Railway is the only case I know of where it has been proposed, to put a bit of line, joining the system of one company, into the hands of another. But for this interposition of the Great Eastern, the agreement with us would of necessity be renewed; for the Ramsey Company cannot work the line itself.

Round (for promoters): The Ramsey Railway is not a branch of the Great Northern. It was constructed by an independent company; and the Great Northern merely agreed to work it. The agreement will terminate before this bill can receive the Royal assent; and there is no

provision for a renewal. The Great Northern accordingly have no continuing interest in the Ramsey Railway. As to the abandonment of the Ramsey Branch, no objection is made to that in the petition.

Cripps: My suggestion was that this clause might be struck out.

Round: There is no pretence for such a suggestion, and it is not made in the petition. There can obviously be no competition between the companies if the Ramsey Branch is abandoned; and the Great Northern are not entitled to ask for running powers for the purpose of poaching on our district. Seeing that the Great Eastern hold such a large amount of stock in the Ramsey Railway, it is obvious that it will be in our power to renew the agreement with the Great Northern, or not.

Mr. RICKARDS: The bill proposes to confirm the purchase of the Ramsey Railway by the Great Eastern.

Coates (Parliamentary agent, for petitioners): It is a bill to make legal that which is illegal.

Round: Without this bill the Ramsey Railway may not legally become the property of the Great Eastern; but the agreement between the Great Northern and the Ramsey Company is preserved by clause 4; and that being so, the petitioners are not injured.

The *locus standi* of the petitioners was Allowed.

Agents for Bill, *Sherwood and Co.*

Agents for Petitioners, *Dyson and Co.*

MIDLAND RAILWAY (ADDITIONAL POWERS) BILL.

18th March, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.*)

Petition of THE VESTRY OF ST. PANCAS.

Suburban Railway—Vestry—Covered Way—Substitution of Open Cutting—Injurious effect of, on Property and Rates.

A bill promoted by a Railway Company (*inter alia*) for the repeal of a proviso in their Act of 1863 requiring them to construct a certain portion of their line in London by means of a covered way, and without any shaft for ventilation, was opposed by the Vestry, who, under the Metropolis Local Management Act, had the control of the streets, and of the paving and lighting, within the parish. The petitioners contended that if an open cutting were substituted for a covered way, the rateable value of the surrounding property would be diminished, and the street traffic would be inconvenienced and endangered. The proviso had

been inserted at the instance of owners and occupiers, who (excepting Lord Camden, whose *locus* was not opposed) did not now petition against its repeal:

Held, that the Vestry had no *locus standi*.

A proviso in sec. 67 of "The Midland Railway (Extension to London) Act, 1863," enacted that between the south side of the street called St. Paul's Road and the north side of the place called Camden Road Mews, the railway should be constructed by means of a covered way, and without any shaft for ventilation. The petitioners, the Vestry of St. Pancras, complained that, notwithstanding this enactment, the company now sought for power to remove the roof or covering from the portion of the railway so authorised and to maintain the same as an open cutting. The petitioners alleged that the proviso was introduced for the protection of the ratepayers in that part of the parish which formed a portion of the Camden Town Estate, and that its repeal would injure the property and reduce its rateable value; that the Company had fenced, under the Railways Acts, the sides of the road under which the covered way went, but that if the railway up to the roadway were left as an open cutting, it would be necessary for the safety of the public using this road that other fences should be put up and maintained by the Company.

The *locus standi* of the petitioners was objected to on the following grounds: (1) no land, building, or property of the petitioners is taken or used, and the bill interferes with none of the streets of the metropolis within the parish, or with the lighting or paving of the same, or with any rights or privileges of the petitioners; (2) the petition does not show or allege that the removal of the roof or covering referred to will alter, prejudice, or affect any right, property, privilege, or interest of the petitioners; (3) it is not shown or alleged what property it is which will be injured by the repeal of the proviso mentioned, nor is it, in fact, shown or alleged in any part of the petition that any property belonging to or under the control or protection of the petitioners will be injured by the repeal; (4) the proviso was not, as alleged, introduced for the protection of the ratepayers of that part of the parish of St. Pancras which forms a portion of the Camden Town Estate, but for the protection and at the instance of the inhabitants of Camden Square; (5) the allegation that the repeal of the proviso will reduce the rateable value of property in the parish is not a ground upon which, according to practice, petitioners are entitled to be heard; (6) the alleged necessity in a certain contingency of other fences being put up and maintained by the company does not disclose any sufficient injury or interference with property, rights, interests, or privileges of or under the control or management of the petitioners; (7) there is no provision by which the company will be released from the obligation imposed on them by the Public General Acts to maintain good and

sufficient screens or fences where the railway passes under the road, and the Company will remain liable to that obligation; (8) no sufficient ground of objection is alleged entitling the petitioners to be heard.

Shrubsole (Parliamentary agent, for petitioners): The petitioners contend, first, that by making what was to be a covered way an unroofed way, adjoining property will be deteriorated in value, the consequence of which will be a diminution in the rates levied by the parish; and secondly, that they are interested in the roads in proximity to the covered way, the traffic on which roads will be inconvenienced by the noise and steam and smoke which will proceed from the open way. It appears from the plan that the way now proposed to be made open instead of covered will be 170 feet long, and it abuts on a road on one side of which there are houses.

The CHAIRMAN: Who are the parties who procured the insertion of the obligation to make the way a covered way?

Shrubsole: It was inserted at the instance more particularly of the people in Camden Square, but with the full knowledge and concurrence of Lord Camden, who has been memorialized by his tenants on the subject.

Bilder (for promoters): There is nothing about noise or smoke in the petition. S. O. 131, under which alone the petitioners can be heard, leaves it to the discretion of the Court to admit them or not; and to entitle them to be heard they "must show the probability of substantial injury to their town or district" (Cliff. & Steph. *Practice*, 102). The petitioners here have not shown or substantiated injury, and they are not entitled to be heard under that S. O. With respect to the claim to be heard by reason of depreciation in rateable property of the parish, admitting for the sake of argument that the rateable value will be diminished, the diminution of value will fall first on the owners of the property, who, with the exception of Lord Camden, are not petitioners, and if the depreciation of the property is in their view so remote or insufficient that they do not think it worth while to petition, the ulterior injury to the Vestry in consequence of the diminution of assessable value of the property must be a very shadowy thing indeed. Lord Camden is a petitioner, and he may be presumed to be well able to protect his own interests as regards any apprehended diminution in the value of the property. With regard to fences, the General Acts provide for the fencing of roads over railways, and there is nothing in the petition taking this case out of the ordinary category of cases. No peculiar danger or difficulty has been suggested as to these roads which is not common to every road. Moreover, though the Vestry have to do with the paving and lighting of the roads, they have nothing to do with fencing, which is provided in the interest of the landowner.

The *locus standi* of petitioners was *Disallowed*.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

SHEFFIELD CORPORATION GAS (NEW WORKS) BILL.

25th March, 1870.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.)

PETITION OF CONSUMERS (in places not within the limits of the Borough of Sheffield) OF GAS SUPPLIED BY THE SHEFFIELD UNITED GAS LIGHT COMPANY.

Corporation—Gas Supply of Borough—Existing Company—Corporation Gas Bill—Opposed by Consumers outside Borough.

The Corporation of Sheffield promoted a bill authorising them to supply gas, within the limits of the borough only, in competition with an existing company whose Parliamentary area of supply extended to certain parishes beyond the borough. The *locus standi* of the company was not disputed; but the bill was also opposed by consumers of the company's gas outside the borough, who alleged that by the proposed competition the company might suffer loss or be driven out of the field, so that the petitioners, in the former case, might be subjected to an increased charge for gas, and in the latter might be deprived of a supply altogether:

Held, that, the bill not seeking to interfere with supply beyond the borough, the outside consumers had no such interest in the subject-matter of the bill, and were not so affected by it, as to be entitled to a hearing.

This was a bill to authorise the Corporation of Sheffield to manufacture and supply gas within the borough of Sheffield, and to establish gas-works for that purpose.

The petitioners alleged that the borough of Sheffield was at present supplied with gas, both for public and private purposes, by the Sheffield United Gas Light company, under the provisions of their special Acts, the limits of which included, not merely the borough of Sheffield, but also places beyond the borough; that the petitioners and other consumers of gas within the limits of the company's Acts were now and had been supplied with gas of a higher illuminating power than the company were required to supply, and at prices less than the company were authorised to charge, and the company possessed ample means of providing for any increased consumption which for several years to come was likely to arise; that were the present bill to pass, and the Corporation to carry out the powers thereby conferred upon them, great and unnecessary injury would be done to the highways within the borough which were used by the

petitioners; that in the opinion of the petitioners the supply of gas within the borough of Sheffield and the company's district could be afforded with greater advantage to the consumers by the company than by the Corporation; that the passing of the bill would be prejudicial to the interests of the petitioners as consumers of gas; that it would be unjust to the shareholders in the gas company were the Corporation authorised, with funds to be raised as proposed by the bill, to enter into competition with the company for the supply of gas in the borough; that the petitioners, in common with the other consumers in the district, were entitled to a reduction in the price of gas in case the profits of the company exceeded the rates prescribed by the special Acts; and if the Corporation were authorised to enter into competition with the company as manufacturers and sellers of gas, the benefit of such reduction would be taken away or long postponed.

The *locus standi* of the petitioners was objected to because (1) the bill is applicable to the borough of Sheffield only, in which the petitioners have no interest; (2) the bill does not interfere with the rights or powers of the Sheffield United Gas Light company with respect to the supply of gas beyond the borough, in which alone the petitioners are or may be interested; (3) the petitioners have not such an interest in the highways within the borough of Sheffield as entitles them to be heard upon the question whether the Corporation shall or shall not be empowered to light their borough with gas; (4) the fact that the company are empowered to supply gas beyond the borough does not entitle consumers of their gas beyond the borough to be heard upon a question of giving power to supply gas within the borough to the local authority, the company having no monopoly in the supply of gas either within or without the borough; (5) the petitioners have no such interest in the subject-matter of the bill as entitles them to be heard.

Richards, Q.C. (for petitioners): By the 93rd section of "The Sheffield Gas Act, 1855," the company are compelled to charge precisely the same price to consumers in the borough as to consumers outside. The uniform price now charged is 3s. 3d., the maximum price being 4s.

The COURT: Are the gas company petitioners as well as the consumers?

Richards: Yes. There are altogether 305 consumers outside the borough, 150 of whom have signed the petition. These persons have the deepest interest in the question of the gas supplied to the borough. At the present moment, though the company are charging so much less than their maximum price, their reserve fund is full, and consumers outside the borough have a reasonable expectation of a reduction in the price of gas at no distant time. Then the petitioners have nobody to represent them. They are not like consumers in the borough, who may be said to be represented by the Corporation; for the corporate interests are diametrically opposed to those of the petitioners. The bill enables the Corporation to light the borough in competition with the existing company; in other words, to trade upon the rates in competition

with the private capital of the company. In so doing the Corporation will be at an enormous advantage over the company, being exposed to little risk, and content with little or no profit. The result may be that the company will be driven out of the borough, in which case the consumers outside will be without any supply at all, for the Corporation are not bound to supply them. Again, if the company's business be much diminished, they will be unable to supply the consumers outside at the present low price. Supposing the company are not actually driven out of the borough, but the two parties carry on a ruinous competition, experience shows that this will lead ultimately to a rise in the price charged by both competitors, and so will affect the pecuniary position of the petitioners.

The COURT: Are the company obliged to supply consumers outside the borough?

Richards: Outside the borough the parochial authorities can call upon the gas company to lay down mains to light any public street, and then any person within a certain limited distance of the main can insist upon being supplied.

Johnson, Q.C. (for promoters): This is the first case I have known in which persons in the position of the petitioners have claimed a *locus standi* against a Corporation seeking to establish gas works and to supply gas merely within their own borough. Even if the Corporation were seeking to supply gas throughout the whole district at present supplied by the gas company, it would be doubtful whether the petitioners would be entitled to be heard. In such a case if the outside consumers could be heard at all, they could only be heard through the local authority representing them, or if there were no local authority, then through a majority of the inhabitants in public meeting assembled. Another bill has been introduced to enable the Corporation to purchase the works of the existing gas company. Against that bill the consumers outside the limits of the borough might have some ground for claiming to be heard on a petition alleging that the gas supply is better managed by a commercial company than by a Corporation, and that the petitioners would not be so well supplied by a Corporation as by a company. But no such argument arises here, for by this bill the Corporation do not interfere with the existing gas works; they do not affect the supply outside the borough; and they do not affect any of the provisions of the existing Acts with regard to reduction of price. The gas company themselves, to whose *locus standi* no objection has been raised, will urge before the committee every argument which can be urged by the petitioners with respect to the allegation that the highways will be disturbed. That, however, is a question entirely for the Corporation, the borough highways being under their jurisdiction. As to the allegation that the petitioners may lose the benefits of a reduction in the price of gas by an unprofitable competition between the company and the Corporation, if the petitioners are allowed a *locus standi* on that ground, the inhabitants of a wide agricultural district might, upon the same pretext, come in and oppose a scheme brought forward by a Corporation for the benefit of the inhabitants of

their own borough only. There is no obligation on the company to lay down pipes in the outside district. The only obligation is that where a main is laid down in a street, and a house-owner gives security for the cost of making a communication between his house and the main, the company is bound to give a supply. The fact is, however, that in these outside districts there are no streets.

The CHAIRMAN: And clause 80 of the company's Act provides that extensions of the company's mains are only to be carried out with the consent of the Corporation.

Johnson: That strengthens my case, for under that clause the petitioners are protected, through the Corporation, against extensions that will tend to keep up the price of gas.

The *locus standi* of the petitioners was Disallowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dorington & Co.*

CLYDE LIGHTHOUSES BILL.

30th March, 1870.—(Before Mr. WYNN, M.P. Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.)

Petition of the CALEDONIAN RAILWAY COMPANY and of TRADERS.

Navigation—Dues on Shipping—Canal—Lighthouse Board—New Taring Body.

The Clyde Lighthouse Commissioners were empowered to levy tolls upon vessels for the maintenance of lights and beacons, the surplus being applied to the improvement of the navigation "above Greenock." At the date of the Act constituting the Lighthouse Board the navigation did not extend beyond Dumbuck, but the Lighthouse Board had for several years paid over the surplus to the Clyde Trustees for the improvement of the navigation as far as Glasgow. The Board now promoted a bill for reconstituting their body, levying such rates as would defray the cost of lighting, and empowering the Clyde Trustees to charge an additional rate on shipping in substitution for the surplus fund hitherto received by them from the promoters; the amount of the double rate proposed not being higher than that of the lighting toll now levied. The bill was opposed by the Caledonian railway company as owners of the Forth and Clyde canal, and by traders on the canal, upon the ground that as the ships using that canal derived no advantage from the navi-

gation between Greenock and Glasgow, they should not be required to contribute towards the improvement of this part of the navigation, and at all events should be heard against a proposal to hand them over to a new body constituted for taxing and general purposes. On behalf of the Forth and Clyde canal, frequent objections had been taken to the appropriation of the surplus arising from lighthouse rates to the improvement of the navigation generally, on the ground that the Act of 1756 only authorised the appropriation of the fund for the purposes of the navigation as then existing. The petitioners now contended that they should be heard against a proposal to render legal such an employment of the surplus, even though the gross amount of rate imposed remained the same :

Held, that the petitioners were entitled to a *locus standi*.

This was a bill "to provide for the management and maintenance of the lighthouses and beacons in the Firth of Clyde, and the improvement of the navigation, and other purposes." It recited that under the Act 29 Geo. II. constituting the Lighthouse Trust, lighthouses and beacons had been erected at various places in the Firth, and, out of the surplus revenues arising from the rates, the Commissioners had expended considerable sums of money in removing shoals or flats in the Firth, below and above the harbour of Greenock, five-sixths of those surplus rates having been annually expended under an arrangement with the Lighthouse Commissioners by the trustees of the Clyde Navigation, in improving the navigation above Greenock. In lieu of the surplus lighthouse rates appropriated to the navigation, the bill authorised the Clyde Navigation trustees to levy rates on vessels navigating or using the river. The bill also altered the existing rates and duties on vessels; and incorporated a new body of trustees, transferring to them the existing lighthouses and beacons, situate to the west of Newark Castle, those to the east being vested in the Clyde trustees.

The petition, presented by the Caledonian railway company, and thirteen firms of traders on the Forth and Clyde canal, belonging to the Caledonian railway company, alleged in substance as follows :—Though Glasgow is now the point at which the navigation of the Clyde ends, it formerly ended at Dumbuck. Many years ago the navigation was improved from Dumbuck to Glasgow, so that the present mode of getting from the sea to Glasgow is partly by the unimproved navigation up to Dumbuck, and partly by the improved communication from Dumbuck up to Glasgow, which has been maintained at considerable cost as compared with the other part of the navigation. The Forth and Clyde canal comes into the navigation at Bowling, just below the most expen-

sive part of the navigation. Therefore vessels pass into the canal without using that part of the navigation. Several contests have taken place between the trustees of the Clyde Navigation and the owners of the Forth and Clyde Canal, the latter contending that if rated at all, vessels using the canal ought not to pay at the same rate as vessels which go on to Glasgow, and have the benefit of the improved portion of the navigation. In all these contests the canal has been successful. They have procured for themselves a diminution of the rates which the Clyde Navigation had power to assess, and an arrangement was made with the sanction of the legislature some time ago, by which the Clyde Navigation was divided into stages, and vessels paid in proportion as they used those stages. In addition to the navigation charges which the Clyde trustees levy, charges are levied by the Lighthouse Commissioners upon vessels in respect of lighthouses, the furthestmost of which is at Cumbræ. The same charge for lighthouses is levied upon all ships passing the Cumbræ light, whether they enter the Forth and Clyde canal, or whether they proceed to Glasgow, of which, however, the petitioners do not complain, inasmuch as they have the benefit of lighthouses. For a considerable time the lighthouse charges have been more than sufficient to pay the lighthouse expenses, thus leaving a surplus. Under the Act of 1756, by which the Lighthouse Board were established, they were to apply the funds received, in the first place, to the maintenance of the lights; if a surplus remained they were to apply it in maintaining or improving the navigation up to Greenock; and if a further surplus remained, they were to apply it to the improvement and maintenance of the navigation above Greenock—"above Greenock" meaning up to the point at which the navigation at that time ended, viz., Dumbuck and not Glasgow. The petitioners have for some years complained that instead of applying the surplus themselves to the improvement of the navigation above Greenock, the Lighthouse Commissioners have handed a large portion over to the Clyde Navigation trustees, who have applied it for the improvement of the navigation up to Glasgow, which is an indirect reversal of the staging arrangement. The bill, though promoted by the Lighthouse Commissioners, empowers the Clyde Navigation trustees, who have already drawn large sums from the existing lighthouse trust, to levy, in lieu of these sums, a rate of five-twelfths of a penny per register ton for each time vessels shall pass the Cumbræ lighthouse, outwards or inwards, on any foreign voyage; and a rate of five twenty-fourths of a penny per register ton, for each time vessels shall pass the lighthouse, to or from any part of the United Kingdom. The provisions of the bill, therefore, besides contravening the bargain and arrangement already mentioned, and the recommendations of the Royal Commission as to local charges on shipping, are in themselves unjust and injurious to the Caledonian railway company as owners of the Forth and Clyde canal and the harbours of Bowling and Gourrock, and to the other petitioners and traders using the said canal and harbours.

The *locus standi* of the petitioners was objected to because (1) no rights, &c., of theirs are affected or interfered with; (2) the bill does not affect or interfere with the Forth and Clyde navigation, or the harbour of Gourock, or with any rights or privileges belonging to the Caledonian railway company as the owners of the navigation, and of the harbour, or with any rights or privileges belonging to the other petitioners as traders on the navigation, and on the river Clyde, or as traders using the harbour; (3) the bill does not authorise the levying of any tolls, rates, or duties on or from the Caledonian railway company as the owners of the navigation and of the harbour, or on or from the other petitioners as traders on the navigation and on the river Clyde, or as traders using the harbour, and does not vary or extinguish any exceptions from payment of tolls, rates, or duties to which the petitioners, or any of them, are legally entitled; (4) the bill does not alter or repeal any statutory provision now in force for the protection or benefit of the petitioners, or any of them; (5) the petitioners have alleged no valid or sufficient grounds for a hearing.

Cripps, Q.C. (for petitioners): We are quite willing to pay for the maintenance of the lighthouses, because we receive a substantial benefit from them; but we are not willing that the surplus shall be spent upon the navigation of a part of the river with which we have no concern. It is the same thing as if the Lighthouse Board levied for the lighthouses only so much as they cost, and then the trustees of the Clyde Navigation levied a sum equivalent to the surplus, and applied it to the navigation generally. There having been no Act passed for dealing with the lighthouses since the old Act of 1756, this bill is brought in, which very properly proposes to separate the Lighthouse Board from any connection with the navigation, and only to levy for lighthouses a sufficient amount to keep up the lighthouses; but the Clyde trustees ought not to be empowered to levy a rate which will be imposed upon vessels using the Forth and Clyde canal. This is, in fact, a new rate. It may be said that the vessels using this canal will not on the whole have to pay more than they pay at present; that, supposing the rate to be a penny at present, three-farthings in future will be levied by the Clyde trustees, and the remaining one farthing by the Lighthouse Board. But we contend that, having paid the lighthouse toll from which we receive benefit, we ought not to be compelled by a new legislative enactment to pay tolls in perpetuity, for an object which we have always resisted, and from the application of which tolls we receive no benefit. By this toll the Forth and Clyde canal will be rendered less attractive to vessels, and our interests will be injuriously affected. Moreover, we have a right to be heard upon the proposal to hand us over to a new taxing body; such a proposal of itself gives us a *locus standi*. We have protested against this payment heretofore, and it should not now receive legal sanction without our being heard.

Granville Somerset, Q.C. (for promoters): The position of the petitioners is not in any way altered by the bill. They will pay exactly the

same quantum of rates as at present. By the Act of 1756, certain tolls were imposed for maintaining the lighthouses, the surplus being applied first in removing the shoals and flats, and making and placing beacons below the harbour of Greenock, and then if any further surplus remained, one-sixth was to be paid to the bailies of Greenock for the improvement of Greenock harbour, and the remainder applied "towards the improvement of the navigation of the river Clyde, above the harbour of Greenock." That must mean as far as the river Clyde extends above Greenock, and, therefore, the application by the Navigation trustees of the surplus to that portion of the river up to Glasgow, as well as to the other parts of the river, is in conformity with the terms of the Act. It is not alleged in the petition that injury will be sustained by the petitioners. The absence of an allegation that vessels using the canal pay these rates, or are in any way affected, is fatal to the claim. (*Severn and Wye Canal, &c. Bill*, 1869; *Petition of Owners*; *Cliff. & Steph.* 74). There is no statement that the ships using the Forth and Clyde canal pass the Cumbrae lighthouse at all, or pay any rate for passing it, and as a matter of fact I believe that not one in five hundred does.

Cripps: We allege, "that by means of the Forth and Clyde canal, sea-going vessels pass speedily and with ease between the Atlantic and German oceans."

Somerset: The petitioners do not allege that they pass the Cumbrae light at all, and they do not say in any portion of the petition that they will be affected by the rates. The fact is, that in 99 cases out of 100, the ships which pass the Cumbrae do not go up the Forth and Clyde canal, but transfer their goods into other vessels. The *Greenock Harbour Bill* 1866 (*Smeth.* 129), and the *Caledonian and Forth and Clyde Bill*, 1867; *Petition of Leith traders* (*Cliff. & Steph.* 67), are in point. If these petitioners are entitled to be heard, then the owners of a vessel coming from anywhere, and passing the Cumbrae light, will be entitled to be heard. The shipowners and traders of Glasgow have petitioned, and to their *locus standi* no objection has been raised.

Cripps: Their interests are antagonistic to ours.

The *Locus Standi* of the petitioners was Allowed.

Agents for Bill, *Lock and MacLaurin*.

Agents for Petitioners, *Grahames and Wardlaw*.

GAS-LIGHT AND COKE COMPANY'S BILL.

30th March, 1870.—(Before Mr. WYNN, M.P., Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.)

Petitions of (1) IMPERIAL GAS-LIGHT AND COKE COMPANY; (2) WESTERN GAS-LIGHT

COMPANY (LIMITED); (3) BARKING GAS COMPANY; (4) METROPOLITAN BOARD OF WORKS; (5) VESTRY OF ST. PANCRAS; (6) VESTRY OF ST. MARYLEBONE.

Metropolitan Gas Companies—Districting Arrangements—Supply in Bulk beyond Metropolitan Limits—Metropolitan Board of Works—Vestries—Interference with Streets—Control exercised over Gas Companies by Metropolitan Board—Practice—Competition—No Allegation of.

A bill was promoted by the Chartered Gas Company of London giving them the same powers of opening streets and supplying gas in bulk to districts beyond the metropolis which they possessed under existing legislation within the metropolitan area. The bill was opposed by three other metropolitan gas companies on the ground that their mains and pipes would be disturbed and injured if the powers sought for were exercised, and if the districts of these companies were traversed by the promoters:

Held, that no case for a *locus standi* had been made out by the three gas companies, the powers asked not enlarging those already possessed by the promoters within two of the petitioners' limits, and no question of competition being raised in these petitions, although referred to in the notice of objections.

The bill was also opposed by two metropolitan vestries, who objected to the proposed interference with the streets; and by the Metropolitan Board of Works, who claimed to appear as having the control of the sewers, and also as representing gas consumers, and possessing various statutory powers relating to the supply of gas within the metropolitan area; the bill seeking to alter in certain respects the conditions upon which gas was supplied within such area:

Held, that the Vestries and the Metropolitan Board had a *locus standi*.

This was a bill to enable the Gas-Light and Coke company (known as the Chartered Gas company) to purchase by agreement the undertaking of the Victoria Dock Gas company; to supply gas in bulk by agreement to any company, person, or body of persons outside the metropolitan area; to sell, lease, or exchange surplus lands; to protect the company against the loss of gas rents; and for other purposes. The bill recited that by the promoters' Act of 1868 the company was empowered by agreement with any of the metropolitan gas companies "to supply gas in bulk to such companies for distribution by them in their several districts of supply," and that it was expedient that a like

power of supplying gas in bulk should be given to the company with respect to companies, persons, or bodies of persons beyond the limits of the metropolis, and that the company, and each or any of such other companies, persons, or bodies of persons should be empowered to enter into agreements with reference thereto, and with reference to the laying down of mains or pipes to connect the mains of the Company with the mains and pipes already laid down or hereafter to be laid down within the districts of such other companies, persons, or bodies of persons." And by the 5th clause of the bill powers for that purpose were accordingly conferred.

The petitioning gas companies raised no objection to the purchase by the promoters of the works of the Victoria Docks Gas company.

The petition of the Imperial Gas-Light company, however, alleged that the bill would empower the promoters to lay down mains and pipes throughout the thoroughfares in the metropolis, including, amongst others, those within the petitioners' district, with a view of supplying gas in bulk to gas companies situate outside the metropolitan area; that in the year 1857 the several metropolitan gas companies having found by experience that not only a great waste of capital, but also a great amount of inconvenience both to themselves and the public arose from maintaining two or more mains and pipes in the same district, resolved to divide the metropolis into separate districts, each to be supplied by only one company; that this resolution led to long Parliamentary enquiries and eventually to the passing of the Metropolitan Gas Act of 1860, by which the system of dividing London into districts, each to be supplied with gas by only one company, was adopted; that during the period when two or more companies existed in the same district the inconvenience and the expense both to the companies and the public, arising from the breaking-up of the pavements and the streets, were generally admitted, and the powers now sought by the promoters would revive all those inconveniences without any corresponding advantages to the public, and without any present necessity; that no suburban company present required to be supplied by the promoters; that the other metropolitan gas companies, and especially the petitioners', would be seriously prejudiced by these powers, and the laying down of additional mains, necessarily of a large calibre, might greatly interfere with the existing mains; that in case of escapes of gas it would be difficult to ascertain from which mains and set of pipes such escape emanated, and this would lead to the double breaking-up of the pavements for the purpose of discovery, which was found to be a fertile source of inconvenience before the Act of 1860; that if such a power were granted to the promoters there would appear to be no sufficient reason for withholding the grant of a similar power from any other metropolitan company, which would lead to the laying down of a multiplicity of mains in the metropolitan thoroughfares, thus neutralising the principal object of the Metropolitan Gas Act; that, in the absence of any immediate call for the powers now desired,

the object of the promoters would appear to be merely to give a fictitious value to their shares, though the present capital of the company would be quite insufficient to carry those powers into effect.

The Western Gas company petitioned on very similar grounds, alleging that they were one of the Companies supplying the metropolis, and parts beyond the metropolitan area, with gas, and were subject to the provisions and restrictions of the Act of 1860; that there was no sufficient reason for granting the powers of which the petitioners complained, and that the indefinite extent of such powers would be a perpetual source of doubt and contention.

The Barking Gas Company alleged that the bill sought to supply gas in the district now supplied solely by the petitioners, who had expended very large sums upon their works; that there was no need of any additional and independent gasworks, or mains or pipes, other than those of the petitioners, for the supply and distribution of gas within their district; nor could new works be established, or other mains and pipes laid down, without such an interference with the rights and interests of the petitioners as would be most prejudicial to them; and that so much of the preamble of the bill as related to the supply of gas in bulk within the petitioners' district (except so far as the same might seek to supply gas in bulk to the petitioners) was unjust to them, and incapable of proof.

The petition of the Metropolitan Board of Works set forth that the Board were the representatives of the gas consumers within the metropolitan area, and that powers were sought for in the bill inconsistent with the interests of rate-payers and consumers; that the petitioners were entrusted with various powers in relation to the sewage and drainage of the metropolitan area, the regulation and preservation of the thoroughfares within that area, the prevention of encroachment, the supervision of dangerous structures and other matters; and by virtue of the Gaslight and Coke Company's Act, 1868, they appointed examiners for the purpose of testing the gas supplied by the promoters outside the City of London; that even if, upon due inquiry, it should seem expedient that the Victoria company should be incorporated with the company, all existing enactments as to the price and illuminating power of gas, the dividends payable, and other matters should apply to the district of the Victoria company, in the same manner as such enactments applied to the districts supplied with gas by the promoters, and that all clauses in the Victoria company's Act, inconsistent with such provisions, should be repealed; that the power of laying down and maintaining mains or pipes, as proposed, for the purpose of supplying gas in bulk, would be attended with the greatest inconvenience, would lead to a constant interference with the streets of the metropolis, and, in fact, to a great extent neutralise the provisions of the Metropolitan Gas Act, 1860, which confined the various gas companies and their mains to separate districts, and thereby prevented the breaking-up of the same streets by various companies.

The petition of the St. Pancras Vestry set

forth that if the powers sought for under the bill could be exercised (as the petitioners were advised they could be) within the limits of the metropolis, although, upon the face of the bill, they would appear to be applied for as regards any district or place beyond the limits of the metropolis, these powers would or might be, exercised in the parish of St. Pancras, and to this the petitioners strongly objected, as it would involve interference with streets, now well paved, and injury to such streets without any necessity; that the petitioners were injuriously affected by the bill, and objected thereto, unless the powers sought for were restricted to places, streets, or roads outside the metropolitan area.

The petition of the Vestry of St. Marylebone was to the like effect.

The *locus standi* of the Imperial Gas Light and Coke Company was objected to, because (1) The bill is permissive only, and contains no power to construct new works, or to purchase compulsorily or otherwise interfere with the property of the petitioners, or of any other body or person, nor do the petitioners allege that the bill contains any such power, nor have they any property prejudicially affected by the bill. (2) The bill gives no power to the promoters to compete with the petitioners, who have no right to be heard on the ground of competition. (3) The power to break up streets in the metropolis is already possessed by the promoters, and is not proposed to be increased; but if it were, the petitioners would have no right to be heard, as they are not the municipal government, or other authority having the local management of the metropolis. (4) The petitioners have no such interest as enables them to be heard consistently with the ordinary rules and practice.

The objections to the *locus standi* of the two other petitioning Gas Companies were in substance the same; but to the Barking Gas Company it was also objected that the bill did not abridge or interfere with the statutory powers vested in the petitioners.

The *locus standi* of the Metropolitan Board of Works was objected to because—(1) No new powers were conferred by the bill within the district of the Victoria Dock Gas company. The petitioners were not the municipal or local authority having the local management of that district, nor did they so allege, but suggested that the powers of certain Acts within the metropolis should be extended to such district. The petitioners, however, were not the guardians of the gas consumers within and beyond the limits of the metropolis. The use of gas supplied by the promoters was not compulsory upon the consumers; it was the subject of arrangement between the buyer and seller, as in the case of any other article of trade. (2) The objection to clause 5 was to a power which the company already possessed—that of breaking up streets within the metropolis. The petitioners were not the street authority, and had no right to be heard upon the question if the bill sought any new power to break up streets within the metropolis, but there was no such power in the bill. (3) With respect to the objection to clause 6 (empowering the company to lease or exchange

lands), the petitioners did not attempt to show that they were interested in the question by this clause. (4) With respect to the objection to clause 7 (empowering the company to supply the kind of gas supplied), the petitioners do not show that this clause would prejudicially affect them, but alleged that it would inflict the gas consumers an injustice. The promoters, however, were not the guardians of the gas consumers, and no gas consumer had petitioned against the clause. (5) With respect to the objection to clause 8 (providing that the promoters, if required, should sign a contract with the company before burning the gas), the promoters were not affected, but only gas consumers. (6) With respect to the objection to clause 12 (as to payment of interest out of capital), the promoters were not affected, and were mistaken in their construction of the legislation of 1868. They had no such interest as enabled them to object consistently with practice.

locus standi of the Vestry of St. Pancras objected to because—(1) The bill contains no power to construct new works, or to purchase land, or otherwise interfere with the property of the petitioners, or of other persons, nor do the petitioners so allege. (2) They are not the municipal or other authority having the local management of the metropolis, nor of any district specially affected by the bill. (3) The bill does not give new power within the metropolis affecting the petitioners, and they allege that their object in petitioning is to remove a doubt as to the construction of one of the clauses. They have no such interest, &c., as enables them to be heard.

locus standi of the Vestry of St. Marylebone was objected to because—(1) The petition is directed against an imaginary power to break up streets throughout the metropolis. There is no such power in the bill. (2) The petition is an appeal against past legislation, and is not directed against sections 61 & 62 of the Gas and Coke Company's Act, 1868. (3) The promoters are not the municipal or other authority having the local management of the metropolis or any district thereof, nor do they so allege. (4) They have no lands or property which will be affected by the bill, which confers no compulsory power whatever. (5) The promoters have no interest entitling them to be heard.

Mr. Q.C. (for Imperial Gas Company): I should have raised no objection if the bill merely empowered the promoters to sell gas to the outlying districts contiguous to their own district. But we are supplying districts beyond the limits allotted to us in 1860; and if the bill gives the promoters power to supply these districts with gas at a lower price than that fixed by us. Under the bill too, the promoters, notwithstanding all the provisions in the Act of 1860 for the non-disturbance of the gas companies, would be able to lay down mains across the whole of the area allotted to us, in order to supply the outlying districts.

Mr. A. (Parliamentary agent, for promoters): The 61st clause of "The Gas Light and Coke Act, 1868," power was given to the company to supply gas in bulk to other companies within

the metropolitan limits, and for that purpose to break up streets; and under the 5th clause of this bill we should have the same power with respect to companies outside the metropolitan limits that we have at present with respect to companies inside the limits.

Clerk: The power given by the 61st clause of the Chartered gas company's Act, 1868, was merely a permissive power enabling them to contract for the supply of gas in bulk to other companies within the metropolitan district. And it also gave them power to make agreements with any other company for "the laying down and maintaining of mains or pipes to connect the mains of the company with the mains and pipes of any such other company already laid down, or hereafter to be laid down within the district of such last-mentioned company," the power being merely permissive. A contract between A. and C. cannot possibly affect the intermediate area possessed by B. No power of breaking up the streets exists in the Chartered company, except by agreement for the purpose of supplying gas in bulk to other companies. The promoters cannot get to district C. without first entering into a contract with the company occupying district B. At all events, if it be only to remove the ambiguity created by the Act of 1868, we have a right to be heard, because the construction of that Act contended for by the promoters is at variance with the principle of the whole of the gas legislation of 1860. The Legislature never could have intended to confer on one company in the metropolitan area the right, for the purpose of selling gas in bulk to somebody else, to break up the streets in the district of one of the other companies, against their consent. The object of the bill of 1868 was to enable the Chartered gas company, who were going to establish new gas works outside the metropolis, to sell gas in bulk by agreement with any one of the companies having a district in the metropolis, arranging with other companies as to the terms on which their mains should be interfered with. The object of the present bill is entirely inconsistent with that, and is meant to enable the promoters to go across the different metropolitan districts, without the assent of the different gas companies, and sell gas at a profit to companies beyond the metropolitan area. Under section 60 of the Act of 1868 the promoters can only lay down pipes from their gasworks at Barking into the limits of the company whom they may agree to supply.

Wyatt (in answer to the Court): If the promoters under the Act of 1868 contracted to supply one of the companies at the West End with gas in bulk, it would be necessary for them to carry their mains through the districts of five companies.

Mr. RICKARDS: If the petitioners' contention be well founded, that the 60th clause does not give the promoters compulsory powers of carrying their pipes across the district of another company to that of the company whom they have agreed to supply with gas in bulk, the clause is inoperative.

Clerk: If the company across whose district the pipes are proposed to be carried do not consent, the district beyond cannot be supplied; but the

powers now asked for largely exceed the powers given by the Act of 1868, because the promoters ask to break up streets wherever they think fit throughout the metropolis for the purpose of selling gas in bulk out of the limits of the metropolis, though no contract has been entered into with the intervening company.

Mr. RICKARDS: This bill professes to give no further powers with respect to an intervening district than the Act of 1868 gives; and therefore if you are correct in saying that the Act of 1868 gave no power to pass through an intervening district to supply a company beyond, the Bill will not give that power.

Clerk: At least the promoters are introducing a new element into gas legislation as it affects the metropolis. The districting arrangement was adopted for the convenience of the companies and of the public, the obligation being at the same time thrown on the companies to supply gas at certain fixed prices; but the promoters now ask, as a commercial speculation, to go across our district, or that of any other gas company, into an outlying district, and compete with us in the supply of that district. They may supply Highgate, for instance, which is within our outlying limit.

Venables, Q.C. (for Western gas company): The promoters ask to lay down mains for a purpose which they did not propose to effect by the Act of 1868. If it be contended that they have a right to break up streets under the Act of 1868 in order to take gas to Marylebone, it is an increased use of that power when they seek to lay down mains in order to supply Harrow. If, under the existing state of things, the promoters agree to sell in bulk to the Imperial gas company gas produced at the Chartered gas company's works at Barking, that cannot injure us, because the Imperial gas company are prohibited by statute from competing with us in the metropolis, and by agreement from competing with us outside the metropolis; but it is now proposed to take power to supply gas to persons between whom and the Western gas company no such agreement exists, and who will not be bound by the Act, because they are outside the metropolis. The promoters will, under the bill, be able to carry on a competition with us even in our own district, for they will be able to supply gas in bulk to a railway station or large manufactory in our district.

Bidder (for promoters): There is no allegation of competition in your petition.

Venables: The question of competition is raised generally, and even if it is not, it is raised in the notice of objections, which I have a right to traverse. The objections do not say that we do not allege competition, but they admit that the question is raised, and then deny that any competition is created.

Mr. RICKARDS: The petitioners can only be heard on the allegations in their petition, and if they do not allege competition, they cannot be heard before the Committee on that ground.

Shiress Will (for Barking gas company): The works of the promoters are situated within our limits of supply, and under the bill they will have power to supply manufactories which

we at present supply, or to supply gas in bulk to "any company, person, or body of persons" beyond the metropolitan limits.

Bidder: By section 60 of the Act of 1868 we are expressly prohibited from supplying gas for sale within the district of the Barking gas company.

Will: The bill will override that Act.

Mr. RICKARDS: This bill only extends to limits outside the metropolis the power given under the Act of 1838 with respect to districts inside the metropolitan area.

Will: The *Brynmawr Gas Bill*, 1865 (Smith, 133), is in point.

Cripps, Q.C. (for Metropolitan Board of Works): From 1860 downwards we have been allowed to appear against all gas bills affecting the metropolis, and it is to the Metropolitan Board that the public are indebted for many of the limitations put upon gas companies. In fact, the Metropolitan Board represent the gas consumers of the metropolis. In 1863 an Act called "The City of London Gas Act," and another called "The Chartered Gas Company's Act," were passed, and as the Chartered Gas Company supply partly within the city and partly without, it was provided that the Metropolitan Board should exercise the same supervision over that part of their undertaking beyond the limits of the city as was given to the corporation within the city. The Metropolitan Board are therefore the superintending authority with respect to the purity, illuminating power, and price of gas supplied by the promoters in their district.

Mr. RICKARDS: If the Chartered gas company supply gas in bulk to companies beyond the limits of the Metropolitan Gas Act, will they be supplying within the district of the Metropolitan Board of Works?

Bidder: They will not.

Cripps: The question arises whether, inasmuch as the Chartered gas company's works are within the district of the Metropolitan Board of Works, anything forming part of that undertaking is not within their district. This bill is not only for the purpose of enabling the Chartered gas company to supply gas in bulk, but it proposes to take powers which are not contained in the City Gas Act, under which the Metropolitan Board are the superintending authority. Under the 6th clause of the Bill, in addition to the power given to the company by the Act of 1868 of selling lands not required for the purpose of their undertaking, the company "may from time to time let the said lands or any of them at rack rent or other consideration, for such term of years as the company may think fit, or may exchange such lands or any of them for the like value," applying "the net proceeds of any such sale, letting, or exchange towards the general purposes of the company." Against this clause the Metropolitan Board claim the right of saying that, inasmuch as the capital of the company has been carefully fixed by Act of Parliament, and as the Metropolitan Board have the power of controlling dividends, the company have no right to take anything from capital and apply it to the general purposes of the undertaking, thereby

altering the dividend they would otherwise pay. Again, by clause 7 it is proposed to enact that "notwithstanding anything in the City of London Gas Act, 1868, contained, the company shall be at liberty to change the kind of gas from time to time supplied by the company, whether common or cannel gas, on giving three months' notice of their intention so to do; and upon the expiration of such notice the company shall thenceforth supply gas pursuant thereto, until any like notice is given for a further change." That is a new power. By clause 8 it is proposed to enact that "every occupier of premises, before commencing to burn gas thereon, shall give notice to the company of his desire so to do, and shall, if required by the company, sign a contract with the company in form as nearly as may be in the schedule to this Act annexed; and if any occupier shall burn gas without giving such notice, or without previously having signed such contract if so required, the company shall be at liberty to discontinue the supply of gas forthwith and to remove the meter." That clause gives a benefit to the company against the consumer, and is an alteration in the terms of supply contained in the City Gas Act.

Bulder: The Metropolitan Board of Works are the superintending authority only for the purpose of testing the quality of the gas.

Cripps: The City Gas Act makes the Metropolitan Board the superintending authority as to divers other matters affecting the supply of gas. Thus, the 57th section enacts that in the month of January, 1871, or any subsequent year, the Board of Trade, upon application by any company or by the Metropolitan Board, may appoint commissioners for the purpose of revising the scale of illuminating power and price of gas; and section 68 provides that the commissioners shall fix such an illuminating power and such a price as shall be calculated to yield to the company, with due care and management, a dividend not exceeding 10 per cent.; so that the Metropolitan Board have superintendence in the matter of dividend. Again, section 70 provides that it shall be lawful for the commissioners and the corporation (or the Metropolitan Board) to agree as to any alteration in the price and illuminating power; while section 79 enacts that the auditor appointed by the Board of Trade shall investigate the accounts of the companies, and "certify how much of the capital of the Gaslight and Coke company ought fairly to be apportioned to their district within the City, first hearing the parties and the Metropolitan Board of Works, if required by either of them, and shall from time to time, as new capital shall be expended, in like manner ascertain and certify the fair apportionment of such new capital." Now the bill proposes (section 12) that "the company may, out of any monies appropriated to the construction of the works of the company at Beckton, near Barking, pay interest on any shares, stock, or mortgage issued for the purpose of the construction of such works under the Act of 1868, at such rate as may be fixed by the company, not exceeding 5 per centum per annum, for a period not exceeding one year from the passing of this Act." So that the company take power to in-

crease their capital, making the works which they have power to construct under the Act of 1868 appear to cost more than they really cost, because they will add interest to the cost of construction; and of course any increase of capital postpones the benefit which the consumers will derive from reduced prices. The amalgamation proposed may also affect the company pecuniarily, and so in the same way affect the consumers. In the Imperial gas Act, and also in the South Metropolitan gas Act, last year, clauses were inserted at the instance of the Metropolitan Board, making them the authority to see that various restrictions imposed upon the companies are duly observed. The Metropolitan Board, therefore, claim the right to go before the committee here, to see that no provisions are inserted in this bill interfering with the Act of 1868. The Board also claim a *locus standi* in respect of their jurisdiction over the main sewers.

Shrubsole (Parliamentary Agent, for the two Vestries): The petitions of the two vestries raise virtually the same point. At the present time, the power of the Chartered gas company to break up streets for the supply of gas in bulk is limited to the supply of districts within the metropolis, but here it is proposed to break up streets in the metropolitan area, in order to supply gas in bulk outside the metropolis. The petitioners are the governing bodies in the parishes of St. Pancras and St. Marylebone with respect to the breaking-up of the streets, and the gas company must apply to them for leave to open the streets.

Bulder (in reply): If the Vestries of St. Pancras and St. Marylebone are the parties to give permission to the gas companies to break up the streets, then the Metropolitan Board of Works cannot have the jurisdiction which they claim. But there are no words in the bill giving us the slightest power to interfere with streets within the metropolis, the power sought under clause 5 applying only to districts beyond the limits of the metropolis. Whether, as one set of petitioners contend, we have power to break up streets within the metropolis, or whether, as another set of petitioners contend, we have no such power, there is nothing in the bill to alter the existing state of things. On behalf of the Imperial gas company it has been urged that if there is an ambiguity in the Act of 1868, they should be allowed to go before the committee, and have that ambiguity cleared up. That, however, gives no ground for a *locus standi*. The same argument applies to the Metropolitan Board of Works. Clause 5 leaves legislation within the metropolis, and the powers of the company within the metropolis, precisely as at present. As to the case of competition set up by the Imperial and the Western gas companies, there is no allegation in either petition raising such a point. Those two companies also complain that the breaking-up of streets may interfere with their mains. Suppose the Bill does give power to break up streets within the metropolis, that will only be analogous to the grant of running powers. An increased use of a line of railway gives no ground for a *locus standi*. The gas company only have an easement in the streets for the purpose of laying down their pipes.

The COURT: You need not pursue that point further.

Bidder: As to the petition of the Barking gas company, there is nothing on the face of the Bill empowering us to supply gas in competition with them. The *Brynmaur Gas Bill* was a case where a company were promoting a bill in Parliament for the very purpose of supplying gas within the district of the petitioners. The supply of gas here, however, is limited to a supply in bulk: clause 60 of our Act of 1868 expressly provides that it shall not be lawful to supply gas for sale beyond our own gas limits: and there is nothing in the bill to repeal that provision, for surely no one can argue that it is repealed by a mere power to supply gas in bulk. If, as the Barking company suggest, a company is got up in competition with them, and takes a supply in bulk from us, such a company will have no power to interfere with the streets, or to lay down pipes. The Barking gas company are the only parties having any power in their district to break up the streets and lay down pipes excepting the Chartered gas company, who cannot supply gas for sale in their district. With respect to the Metropolitan Board of Works, no new power affecting them is sought under the bill, for they have nothing to do with the clauses relating to surplus lands, a change in the kind of gas supplied, and compulsory contracts. Under the Act of 1868, the Metropolitan Board only have a superintending power for the purpose of testing the quality of the gas. As to section 57 of that Act, it only gives the Metropolitan Board power equally with the company to apply to the Board of Trade to appoint commissioners. None of the provisions of the bill militate against those provisions of the Act of 1868 with which the Metropolitan Board of Works have anything to do.

The *locus standi* of the Imperial Gas Light and Coke Company, of the Western Gas Light Company, and of the Barking Gas Company was *Disallowed*.

The *locus standi* of the Metropolitan Board of Works was *Allowed*; as was also that of the Vestry of St. Pancras and the Vestry of St. Marylebone.

Agents for Bill, *Wyatt and Hoskins*.

Agents for Imperial Gas Light and Coke Company, and for the Metropolitan Board of Works, *Sherwood and Co.*

Agents for Western Gas Company, for the St. Pancras Vestry, and for the Vestry of St. Marylebone, *Dyson and Co.*

Agents for the Barking Gas Company, *Walmisley*.

ASHTON-UNDER-LYNE, STALYBRIDGE, AND DUKINFIELD (DISTRICT) WATER BILL.

4th April, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of OWNERS, &c., OF WORKS ON THE RIVERS TAME AND MERSEY, and the CORPORATION OF STOCKPORT.

Water Bill—Municipal Corporation—Owners and Occupiers—S. O. 24—Twenty Mile Limit—Practice—Joint Petition—Distinction between Signatories—Locus Limited, Allowed, and Disallowed—Joint Stock Company—Petition signed by Chairman—Special Authority.

A Water Bill was opposed by certain millowners and by the Corporation of Stockport, who petitioned jointly. There was no special allegation by the Corporation of any injury whatever, but the petitioners alleged generally that they were "the owners and occupiers of extensive works and manufactories" on the banks of the streams from which water would be abstracted, and that the bill provided no protection for their "water rights, properties, and interests."

Held, that upon a petition so framed, the Corporation were only entitled to appear "in so far as they were owners and occupiers of works and manufactories;" and as it was shown that, with two exceptions, the works of the mill-owners were beyond the 20-mile limit contemplated by S. O. 24, the *locus standi* of the other petitioners was disallowed, save in those two cases.

The chairman of a joint stock company (limited) signing a petition "for" the company, need not specifically allege or show that he has received authority to do so.

The bill was one "for making better provision for the supply of water to a district, consisting of the boroughs of Ashton-under-Lyne and Stalybridge, and the district of the Dukinfield local board of health, and their respective neighbourhoods, and for other purposes." It was promoted by the Corporations of Ashton and Stalybridge, and the local board of Dukinfield, the preamble reciting that it would be of great local advantage if these three corporate bodies were authorised to combine in a system of water-supply for the district, and to construct works for this purpose.

The petition was from "undersigned owners and occupiers of works and manufactories on the Rivers Tame and Mersey, in the several counties of Chester and Lancaster, and the mayor, aldermen, and burgesses of the borough of Stockport." It alleged that the petitioners

were the owners and occupiers of extensive works and manufactories, erected on the banks of the Rivers Tame and Mersey at very considerable expense, and employed therein a very large number of workmen, whose maintenance chiefly depended on the active prosecution of the various trades carried on by the petitioners in such works and manufactories; that the waters of these rivers had alone caused such works and manufactories to be there erected, and any abstraction of the waters would cause a serious injury to the petitioners; that for many years past schemes had been proposed, some of them successfully, for the abstraction of water from the various feeders of the rivers, and the regular flow of water therein was diminished and great injury to the petitioners had resulted; that all these successive schemes had professed to send down compensation water, which had never yet been equivalent to the damage done to the petitioners; that the bill intended to interfere with, impound, take and divert the waters of several springs, streams or brooks which the petitioners enumerated, all these waters being, in fact, feeders of the Rivers Tame and Mersey, and now naturally flowing down to and passing the petitioners' works, manufactories and premises, and being therein used; that the bill contained no provisions to protect their water rights, properties, and interests, nor any sufficient clauses for securing to them any sufficient compensation either in water or otherwise; and lastly, they urged that the bill would be a direct invasion of their riparian and other rights, without sufficient compensation or protection.

[The petition was signed by Cephas Howard & Co., cotton manufacturers, Stockport; Alfred Neild, for Thomas Hoyle & Sons (limited), calico printers, Dunkinfield; Bradshaw Hammond & Co., calico printers, Reddish; Melland & Coward, bleachers, Heaton Norris; Kershaw, Leese & Co., cotton manufacturers, Heaton Norris; Robert Mac Clure & Sons, cotton manufacturers, Heaton Norris; T. & J. Leigh, cotton spinners, Portwood; John Walthew, cotton spinner, Heaton Norris; David Bowlas & Co., cotton spinners, Heaton Norris. The common seal of the borough of Stockport duly affixed by order of the council; Henry Coppock, Town Clerk.]

The *locus standi* of the petitioners was objected to because (1) and (2) as to the Corporation of Stockport, there is not in the petition any allegation that the corporate property or rights are in anywise affected by the bill, or that the town which they represent is situate upon any of those streams, or uses their waters, or uses the Rivers Tame and Mersey, or is even situated on the banks of the Rivers Tame and Mersey, or that any water will be abstracted from them under the powers of the bill. In truth the petition is from first to last a mill-owners' petition, and is throughout founded on and governed by the first allegation, that the petitioners are the owners and occupiers of extensive works and manufactories erected on the banks of the Rivers Tame and Mersey; (3) with regard to the petitioners, Bradshaw, Hammond & Co., of Reddish; Cephas Howard & Co., of Stockport; and T. and

J. Leigh, of Portwood, the promoters object to their right to be heard, inasmuch as their works are situate at a distance of more than twenty miles below the point where the waters to which they lay claim are intended to be abstracted. The promoters submit that the distance of twenty miles is, according to S. O. 24, the limit recognised by Parliament of such an interest as gives millowners, &c., a right to interfere in a waterworks bill; (4) with respect to the petitioners, Melland and Coward, Kershaw, Leese and Co., Robert McClure and Sons, John Walthew, and David Bowlas and Co., the promoters deny their right to be heard, inasmuch as their works are situate below the junction of the Tame with the Mersey, and their interest in the streams and brooks mentioned in the petition, all which are feeders of the Tame, is too remote to give the petitioners a right to be heard; (5) to the *locus standi* of Thomas Hoyle and Sons (Limited), the promoters object inasmuch as Alfred Neild, who signs the petition on their behalf, is not the proper person to sign the said petition, and has no legal authority to sign the same, and does not state upon what authority he signs it.

It was admitted in the course of argument that the works of all the petitioners, except those of Messrs. Bradshaw, Hammond and Co., and Thomas Hoyle and Sons (Limited), were beyond the twenty mile limit. As to the Corporation of Stockport, it did not appear where their works, if any, were situated.

Salisbury (for petitioners): The objection that the Corporation do not in terms allege how and in what respect their property or rights are interfered with is not tenable, because they do in fact allege that, in common with the other petitioners, they are owners or occupiers affected by the bill. The petition is duly sealed with the corporate seal, and if the promoters wished to exclude the Corporation, they should have objected that that body were not the owners of property so affected. The Corporation are not bound to say more than that they are such owners, and having done so here, they have a right to be heard along with the other petitioners. As to the objection to the *locus standi* of those petitioners whose works are more than twenty miles below the source of supply, the *Weardale and Shildon* case (Smeth. 103), shows it to be injury, not distance, which gives the right to be heard; and one of these petitioners has received notice from the promoters that they are going to interfere with his works. The fourth objection applies to four petitioners, whose works are situated below the junction of the Mersey with the Tame. But the promoters propose to take almost every stream in the district; these streams flow into a river, which joins another from which these petitioners get their supply of water for manufacturing purposes; and it is clear that this supply must thereby be diminished and the petitioners must suffer injury. As to the objection to the signature of A. Neild, he is the chairman of the company of "Hoyle and Sons (Limited)."

Pope, Q.C. (for promoters): You must prove that he is so.

Salisbury: It is not necessary to offer such

proof here, nor has it ever been ruled by the Court, that in signing a petition, the chairman of a company must state in terms the position he holds. In the *Maryport District and Harbour Bill*, 1868 (Cliff. & Steph. 4), it was held that a partner need not state that he signs on behalf of himself and his firm.

Pope: The works belonging to two of the petitioners are above the junction of the Tame with the Mersey, the rest of them being below. We admit that the water proposed to be taken by the bill, is water which would in the ordinary course flow down to the petitioners' works.

Salisbury: If it be necessary, I can produce evidence to show that the water proposed to be abstracted, is absolutely required for the petitioners' works.

Pope: Four points are raised in the petition: (1) the right of the Corporation to be heard; (2) the right of the petitioners who are riparian proprietors and owners of mills on the streams, more than twenty miles below the source of our supply; (3) the quantum of interest, which in the judgment of the Court, will entitle petitioners to be heard; and (4) the signature of Alfred Neild, for Thomas Hoyle and Sons. With regard to the Corporation, can the mere affixing of the corporate seal to a millowners' petition entitle them to be heard on it, *quod* Corporation, simply because of such an allegation as the following:—"that your petitioners are the owners and occupiers of extensive works and manufactories erected on the banks of the Rivers Tame and Mersey, at very considerable expense, and employ therein a very large number of workmen, whose maintenance chiefly depends on the active prosecution of the various trades carried on by your petitioners in such works and manufactories." That statement is untrue on the face of it, as regards the Corporation, and, therefore, does not require to be contradicted by us; for of course the Corporation of Stockport neither do, nor can, carry on trades in such works and manufactories. If the Corporation had petitioned on any of the grounds upon which the *locus standi* of such a body is generally allowed, viz., that the town was situated on the banks of the river, that its water supply or the disposal of its sewage would be affected, or that any of the rights belonging to the Corporation, *quod* Corporation, would be prejudiced, the promoters would not have objected to their *locus standi*; but there is not a syllable throughout the petition to shew that anything in which the Corporation of Stockport has an atom of interest will be in any way affected by the bill. The Corporation have merely affixed their seal to the petition of the owners and occupiers of works, in order to give their support to the petition.

The CHAIRMAN: The petition sets forth that it is the petition, not only of owners and occupiers of works, but of the mayor, aldermen, and burgesses of the borough of Stockport, and then says, "that your petitioners are the owners and occupiers of works," and the promoters do not traverse the statement that they are owners and occupiers.

Pope: It is not necessary that that statement should be traversed, for obviously on the face of the petition the allegation is untrue. However,

seeing that if their *locus standi* is admitted they will be limited to the allegations of the petition, and seeing that they have no rights as owners and occupiers of works which will be interfered with, they will be practically excluded, even if they are technically admitted. With respect to the petitioners whose works are more than 20 miles below the point sought to be affected, we base our objection to their *locus standi* on S. O. 24, indicating the limit of distance which, in the judgment of Parliament, entitles parties to notice. You cannot assume, in opposition to the S. O. as suggested on the other side, that the petitioners are injuriously affected, simply because they are below the point of abstraction, and without reference to distance or the quantum of injury, because then any riparian proprietors between the point of abstraction and the sea would have a right to be heard. Parliament, by S. O. 24, has fixed 20 miles as a reasonable limit of distance in such cases. In no case has it been decided that an individual mill-owner whose works are more than 20 miles below the point of abstraction has a right to appear against a bill. In the *Weardale and Shildon Water Bill*, the Corporation of Durham claimed a *locus standi* as a public body, alleging that the abstraction of the water would affect the sewage. In the *Bradford Waterworks Bill*, (Cliff. and Steph. 43), the Aire and Calder Navigation were let in as owners of a navigation to whom S. O. 24 did not apply, but to whom S. O. 17 did apply. With regard to Bradshaw, Hammond and Co., and T. Hoyle and Sons, who are within the 20 miles' limit, the question is the quantum of injury. Now the drainage area affected by this bill is of very small extent. The total drainage area of the Tame as it flows past the works of Bradshaw, Hammond and Co., is 21,000 acres, and the promoters propose to affect 2,900. With respect to the signature of Alfred Neild for T. Hoyle and Sons, in no case has the Court recognised any signature even for a partnership unless on the face of the petition it is stated to have been made on behalf of the partnership and by its authority (*Thames and Severn Canal Navigation Bill*, 1866, Smeth. 96). The petition here does not even say that Alfred Neild is a shareholder; but assuming him to be chairman of the company, though he does not state that he is, he had no right to pledge his company except by the vote of the company. If he be the manager of the company, he can only do those acts which come within the scope of his duty as manager, among which acts petitioning Parliament is certainly not one. Such a signature by the chairman or manager would not bind the company, unless it stated that it was under their authority. For example, supposing costs to be awarded against them for presenting a frivolous and vexatious petition, the company might repudiate the petition.

Mr. RICKARDS: What meaning do you attach to the word "for" before the words "T. Hoyle and Sons"?

Pope: No doubt that means "on behalf of"; but there is no statement that A. Neild signed by the authority of the company.

The CHAIRMAN: Does the Joint Stock companies' Act prescribe any mode in which peti-

tions are to be signed on behalf of the company?

Pope: No provision is made for signing petitions to Parliament; though sec. 47 of the Act of 1862 provides that "a promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of the company under this Act if made, accepted, or endorsed by any person acting under the authority of the company, or if made, accepted, or endorsed by or on behalf or on account of the company by any person acting under the authority of the company."

Salisbury: I can prove that Mr. Alfred Neild was authorised, in terms, to sign for the company.

By the COURT: The *locus standi* of the Corporation of Stockport is *Allowed*, in so far as they are owners and occupiers of works and manufactories. The *locus standi* of Bradshaw, Hammond, and Co., and of Thomas Hoyle and Sons, Limited, is *Allowed*. The *locus standi* of the other petitioners is *Disallowed*.

Agents for Bill, *Dyson & Co.*

Agent for Petitioners, *S. H. Lewin*.

SHEFFIELD CORPORATION WATER BILL.

4th April, 1870.—(Before Mr. DODSON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Petitions of (1) OWNERS, &c., OF MILLS, &c., ON THE RIVERS RIVELIN, LOXLEY, AND DON; (2) OWNERS, LESSEES AND OCCUPIERS; (3) MIDLAND RAILWAY COMPANY; (4) MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.

Water Supply—Transfer to Corporation—Railways Clauses Act, 1863, Part V.—Protective Clauses—Owners—Ratepayers—Representation—Districts Within and Without Borough—Surplus Profits—Local Government Act, 1858—Rating of Railways.

Against a bill promoted by a municipal corporation for transferring to them the undertaking of a water company, and enabling them to levy a water rate within the borough, a petition was presented by owners and lessees of mills, &c., on streams included in the company's sources of supply, who feared that the protective clauses as to quantity, &c., in the company's former Acts would not become sufficiently binding on the corporation, though imposed on that body in general terms by the bill and the incorporated Acts:

Held, that the petitioners had a *locus standi*

against clauses as to the effect of the vesting.

A second petition was presented from owners and ratepayers within the borough, and owners, &c., beyond the borough limits but within the company's limits of water supply:

Held that owners as distinguished from ratepayers within the borough had a *locus standi* against clauses authorising a special water-rate; the remaining petitioners were excluded.

Other petitions were also presented by railway companies having works and property within the borough, who complained that, although under the Local Government Act, 1858, their lands, &c., were only liable to rating in the proportion of one-fourth of their net value, under the bill these would be liable to their full proportion of the special water-rate:

Held, that the petitioners had no *locus standi*.

Upon the transfer of water undertakings to municipal corporations the limitation of profits to 10 per cent. is not continued, though previously binding upon the private companies whose undertakings are transferred.

This was a bill "to provide for the vesting in the Corporation of Sheffield of the undertaking of the Company of proprietors of the Sheffield Waterworks, and for other purposes." The water company were incorporated in 1830, and by a subsequent Act passed in 1853, powers were conferred on them of taking water from the rivers Rivelin and Loxley, subject to restrictions imposed in the interests of owners, lessees, and occupiers of mills and works on these two rivers, and on the river Don, and of other persons interested in the waters. These restrictions, which were embodied in sections 49 to 69 of the Act of 1853, had for their object to secure the giving of a compensation supply; and very minute provision was made as to the quantity of such supply, and the times and circumstances under which it was to be afforded. Later Acts, obtained by the water company in 1860, 1864, and 1867 all recognised and extended the provisions of the Act of 1853. The petitioners, who described themselves as "owners, lessees, or occupiers of mills and works of great value upon the rivers Rivelin, Loxley, and Don, and entitled to the benefit of" the restrictive provisions in the Acts relating to the water company, represented that these provisions were of vital interest and importance to them, and that the transfer of the company's undertaking to the corporation, if allowed, should only take place upon the insertion in the bill of provisions making the observance of these several sections of the former Acts expressly binding upon the corporation.

The *locus standi* of petitioners was objected to because (1) no lands, property, rights, powers, or privileges, of the petitioners, whether under the Acts referred to or otherwise, were taken, abrogated, annulled or altered by the bill, and these Acts themselves were not altered or repealed; but on the contrary the undertaking of the water company was to be transferred to the corporation, subject to all the obligations of the company; (2) the petitioners being secured in their rights under these Acts had no such interest in the subject matter of the bill as entitled them to be heard.

Cripps, Q.C. (for petitioners): Clause 11, that transferring the liabilities of the company to the corporation, is insufficient for our protection. It says that on and from the vesting period the whole undertaking of the company and all their property, powers, rights and interests shall be transferred to the corporation, subject to "all liabilities, debts, claims, and demands of or upon the company." This makes no mention of the special provisions in the Act of 1853.

Bulder (for the promoters): But by the 12th clause, Part V. of the Railways Clauses Act, 1863, (as to amalgamation) is incorporated with the bill and applied to the corporation and the company, and this (sec. 39) will continue the former Acts in full force.

Cripps: We have taken counsel's opinion, and are advised that clauses 11 and 12 are not sufficient to keep us in our present position, and that a special clause ought to be introduced reserving the complicated rights given in the Act of 1853.

MR. RICKARDS: By the incorporation of Part V. of the Railways Clauses Act the name of the corporation will be read in place of that of the dissolved company, and all the liabilities of the dissolved company will remain in force.

Cripps: But this is a transfer of those liabilities to a new body; and it gives the petitioners a right to be heard. The contract is peculiar, for it is a continuing contract; one which is to go on day after day for all time, with reference to the particular matters. If it were a contract that could be executed and then done with, it would be easier to transfer the liability to a new body. Suppose this contract—in which there is no mention of any assigns of the company—had been by deed and not by Act of Parliament, the benefit or obligation of that contract could not, without our consent, have been transferred to a third party. Where, therefore, the transfer is proposed to be by Act of Parliament, we have a right to see, whilst the Act is passing, that our existing rights are properly protected. Under the arrangements embodied in the Act of 1853 the company could only take the waters on certain conditions, and specific remedies were given to us in case the company failed to comply with those conditions. This state of things is altered by the interposition of a new body. And the case is not even like the amalgamation of one company with another, this being a transfer to a corporation.

MR. RICKARDS: Do you consider a corporation less responsible or less capable of performing their contracts than a private company?

Cripps: They may have different interests.

As to some of the matters with respect to which the arrangements in 1853 were made, the position of the corporation may be very different from that occupied by the water company. The body with whom we entered into engagements is to disappear, for the company will be dissolved under the bill. Are we to have no part in adapting the old Acts to the new circumstances?

Bulder: Do you ask to be heard against the preamble?

Cripps: Nominally, I do; but really what we seek are protective clauses.

Bulder (in reply): The petitioners are not entitled to a *locus standi* for the purpose of inserting protective clauses. It has not been shown that there will be any interference with the provisions of former Acts, and the mere fact that it is proposed to transfer the waterworks from the company to the corporation does not give the petitioners a right to be heard. No suggestion is made in the petition that we are less responsible than the water company. It is an extraordinary proposition that anybody with whom a company has contracted, or to whom they are under obligation, should be heard against the transfer of that company's undertaking. It must at least be shown that the contract or obligation is proposed to be interfered with. Clauses 11 and 12 of the bill, with Part V. of the Railways Clauses Act, 1863, place the corporation in precisely the same position as the existing company, and amply protect the petitioners.

THE COURT: The *locus standi* of the petitioners is *Allocated* against clauses 11 and 12.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dorington & Co.*

Petition of (2) OWNERS, LESSEES, and OCCUPIERS.

These petitioners, over 300 in number, were described as being, some owners, lessees, occupiers of property, and ratepayers within the borough of Sheffield, and others as owners, &c., of houses and property beyond the borough limits, but within the limits of water supply of the company. They alleged that the public interests would not be served by the proposed transfer, and that the supply ought to remain in the hands of the company; that the corporation sought power to borrow money and levy a special water-rate, which would be burdensome to the ratepayers and injuriously affect the value of the property within the borough, without any commensurate advantage; and further, that the corporation ought not to exercise powers outside the borough, affecting persons and property not represented in the Council.

The *locus standi* of the petitioners was objected to because (1) the petition had not been submitted to or adopted at any public meeting of persons composing the class which the petition assumed to represent; nor had any public meeting of such persons been held, prior to the deposit of the petition in the House of Commons, at which the views set forth in this petition were adopted; but, on the contrary, at a meeting of ratepayers duly convened resolutions were passed propounding opposite views, and a petition in

favour of the bill was adopted; (2) the petitioners were not entitled to be heard in their individual capacity, inasmuch as the grounds of their complaint were not exceptional or specially applicable to themselves individually, but were of a general character, and such as conferred a *locus standi* only upon those who, in accordance with practice, were entitled to represent general interests.

Round (for petitioners): The endorsement, "The petition of owners, lessees, and occupiers of property in Sheffield" is not strictly accurate, petitioners living both within and without the borough. The limits of the water company's supply are more extensive than the municipal limits, and therefore the corporation by this transfer will acquire powers over a larger area than that which they now govern.

The CHAIRMAN: Will the corporation continue the same charges for water as the company now levy?

Round: The bill contains no provision to the contrary, but over and above the charges now existing, the corporation will have power to levy a special water-rate within the limits of the borough, and to borrow money upon its security. The corporation accordingly are seeking to extend their powers beyond the present municipal limits, and, moreover, are asking for powers which the water company have not got.

Mr. RICKARDS: It seems that the special water-rate will be an additional burden upon those living within the borough for the benefit of those without. What are the relative numbers?

Round: The population of the borough is 240,000. The district outside which the company have power to supply is agricultural, and consists of eight townships, with a population of from 20,000 to 30,000. Three classes of persons have signed this petition: first, the owners of property within the borough; secondly, occupiers and residents who come under the class of borough ratepayers; and thirdly, owners or occupiers beyond the borough but within the water limits. It cannot be contended that the class of owners is represented by the corporation. An owner has no vote; yet if the corporation have power to levy a new rate within the borough he is indirectly affected because trade may thereby be driven away, and the value of property diminished (Cliff. & Steph. *Practice*, 98). As to the ratepayers, the ordinary doctrine of representation does not apply. This is a case of transfer of jurisdiction from the company to the corporation. The bill provides for something beyond the exercise of their existing powers by the corporation, for it involves the principle whether the waterworks can be better conducted in the hands of a corporation than of a private company. Moreover, a fresh power is taken to levy a special water-rate. The *County Down and Belfast Borough Bill*, 1868 (Cliff. & Steph. 131) is in point.

The CHAIRMAN: The petitioners in that case were not seeking to be heard against the common seal.

Round: The special rate levied to pay interest on money raised for increasing the works outside the borough will have the effect of taxing the

ratepayers within, for purposes from which they will only reap an indirect benefit, whilst those outside will derive a direct benefit.

Mr. RICKARDS: On the other hand, if the extended works outside prove remunerative, the ratepayers in the borough will obtain the benefit?

Round: The presumption is that, by taking power to raise a special rate, the corporation feel doubtful of getting an adequate return from mere supply. Then, as to the claim of owners or inhabitants beyond the borough limits; the promoters only object to "Joseph Rogers and others, owners, lessees, and occupiers of property in Sheffield." The moment I satisfy the Court that there are petitioners who are not in Sheffield, their *locus standi* is conceded. No doubt the endorsement of the petition is inaccurate, but the body of the petition is what the promoters have to deal with, in preparing their objections, and they cannot pretend that they were misled. It is said that we do not represent a class, inasmuch as the petition was not adopted at any public meeting. But a petition numerously signed, as this is, by persons who took the trouble to go to the place where it lay for signature, or to sign it when brought to their own houses, is entitled to more weight than a mere resolution, carried by a meeting and signed by the chairman. The corporation allege that they called a public meeting, which came to a different conclusion; but that was a meeting of ratepayers of Sheffield, at which persons beyond the borough limits had no right to be present. These must, therefore, make their views known by a petition of their own. In three out of the four districts beyond the borough limits there are no local boards of health; but even if there were, that is no reason why the inhabitants should not be heard. The *Sligo Improvement Bill*, 1868 (Cliff. & Steph. *Practice*, 98) bears on this question.

Mr. RICKARDS: There is this distinction: that here the special rate is only to be levied within the borough, whereas in that case persons previously under the grand jury were to become subject to taxation by the corporation.

Round: The corporation will become the parties to supply water to the outside petitioners instead of the company, as heretofore.

Mr. RICKARDS: But what is the grievance of the outside petitioners?

Round: What they fear is that the special rate applied for now is only the thin edge of the wedge, and that the corporation, having got possession of the additional area, will come another year to extend this taxing power beyond the borough limits.

Mr. RICKARDS: Then the petitioners will have a good *locus standi*. But here the people outside the limits are objecting to the people inside being taxed for their benefit?

Round: They object to the transfer of the water supply. They may think that the corporation are not likely to manage this so economically as the water company specially incorporated for the purpose.

The CHAIRMAN: The Referees will not trouble the promoters to reply to the case of such of the petitioners as are ratepayers within the borough,

or of those who are owners, lessees, or occupiers outside the borough.

Bidder (for promoters): The remaining class, the owners of property in Sheffield, may properly be heard against a rate which they consider injurious to their property. I concede them a *locus* to that extent; but they have no claim to be heard generally against the transfer of the waterworks. That does not concern them in the least.

The CHAIRMAN: The *locus standi* of owners of property within the borough of Sheffield, not being ratepayers, is allowed against so much of the bill as authorises the levy of a special water-rate. The *locus standi* of the other petitioners is *disallowed*.

Agents for Petitioners, *Dyson & Co.*

Petitions of (3) the MIDLAND RAILWAY COMPANY; (4) the MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.

These Railway Companies, whose petitions were couched in identical terms, represented that they were owners of a railway, railway station, warehouses, and other property within the borough, in respect of which they had to pay a large sum annually for water obtained from the works proposed to be transferred under the bill to the corporation. Being subject to the provisions of the Waterworks Clauses Act, 1847, the rate of dividend of the water company was limited, and upon that limit being reached, a reduction in the rates for water furnished by them became imperative. The bill, however, did not extend this limitation of profits to the undertaking when transferred to the corporation, but on the contrary, proposed to apply all surplus profits in aid of the borough fund. The petitioners also represented that under the Local Government Act, 1858, lands used as a railway were only to be assessed to the general district rate in the proportion of one-fourth of their net value. Under the bill, however, their railway stations, sidings, works, and other property in Sheffield would be liable to the full rate. They accordingly objected to those portions of the bill authorising the levying and application of rates, as unjust in principle.

The *locus standi* of each of the petitioning Railway Companies was objected to because (1) they were only individual consumers of water, and did not allege any ground of objection specially applicable to themselves; (2) their objections were altogether of a general character, and only such as those representing class interests could urge, according to practice; (3) the petitioners had no sufficient interest entitling them to be heard.

Saunders (for both Companies): The stations of both companies are within the borough, and their lines partly within and partly without. They are rated to the full amount under the borough rate, but not under the general district rate. They are naturally desirous of a reduction in the cost of water whenever the profits are sufficiently large.

Mr. RICKARDS: The charge for water does not

affect the railway company more than any other consumers.

Saunders: They are very large consumers, and they are therefore specially interested. The profits which would otherwise go towards a reduction of the water rate will, under the bill, be applied to a purpose from which the petitioners cannot derive the same benefit as ordinary householders, that is to say, to a reduction of the borough rate. We are injuriously affected in two ways: first, we are deprived of the clause limiting the dividends, and hence of a reduction in the price of water; and, secondly, by the application of surplus profits to objects which may be useless or positively detrimental to us. Then as to the special water rate which is to be levied, why should we be deprived of the protection given to railways under the Local Government Act, 1858? Railway companies stand upon this point in a very special position, for the relief they claim is not applicable to other ratepayers in the borough; and exemption of the railway companies from taxation of course means taxation of other ratepayers to that extent. The exemption, however, is to be justified, occupation by a line of railway being of a nature wholly different from occupation by ordinary householders. The *Milford Improvement Bill*, 1869 (Cliff. & Steph. 50), and the *Aberdare and Aberaman Gas Bill*, 1869 (Ib. 112) are cases in which these partial exemptions from taxation have been recognised.

Mr. RICKARDS: How can you contend that the bill injures the railway companies, merely because it does not confer upon them a privilege which they have never enjoyed?

Saunders: Inasmuch as no provision limiting dividend is incorporated, the railway companies will not get the benefit of surplus profits made by the corporation in the same way as other consumers.

Mr. RICKARDS: Where the undertakings of companies are transferred to corporations, the provision as to limit of dividend is not incorporated, the assumption being that the corporation are not going to carry on the undertaking for purposes of profit.

Saunders: Doubtless the provision in its literal wording would hardly be applicable to the case of a corporation: what we desire is that some clause should be inserted, giving the water consumers under the corporation a benefit corresponding to that which they would have had under the water company's administration. The Bingley Extension and Improvement Act, 1867, the Leeds Improvement Act, 1866, and the Leeds Corporation Gas Purchase Bill, now before Parliament, contain clauses for assessing railway companies on the reduced scale.

Mr. RICKARDS: Can you refer to any water Act, in which a similar provision has been inserted?

Saunders: At present I am unable to do so. But we also oppose the transfer of jurisdiction.

Bidder (for promoters): On that point your petition is altogether silent.

The CHAIRMAN: The Referees will not trouble counsel as to the limitation of dividends to 10 per cent.

Bidder (in reply): The petitioners have

made out no case for a hearing. The petition does not complain of the bill directly, or suggest that it does anything prejudicial to them, but merely that there is no provision like that in the Local Government Act, passed for an entirely different purpose. Under that Act certain classes of agricultural and railway property, which derive comparatively little benefit from the purposes to which the local improvement rates are appropriated, escape with a payment of one-fourth. But here it is admitted that the railway companies are large consumers of water, and interested accordingly in the improvement of the supply. The complaint that Parliament has not granted to railways, in respect of borough rates, an exemption similar to that allowed in the case of general district rates, is a complaint against existing legislation, not against the present bill. The Acts quoted cannot be considered in point.

The COURT: The *locus standi* of the petitioners is *Disallowed*.

Agents for Petitioners, Wyatt and Hoskins.

COBHAM RAILWAY BILL.

27th April, 1870.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of JAMES PAINE, GEORGE POWLETT SCROPE, and other landowners; and of JOHN CARLEY COOK, JOHN FISHER EASTWOOD, and other inhabitants of the district.

Railway—Inhabitants of District traversed by Projected Line—Roads—Injury to, by Level Crossings—S.O. 131—Meaning of "District"—Representation—Sufficiency of—Practice—Decision—Court declines to state grounds of.

A bill for the construction of a railway five miles in length was opposed on a joint petition by landowners and ratepayers in the two parishes traversed by the line, on the ground that the district was already sufficiently provided with railway accommodation, and that the proposed line would injuriously affect certain roads which it would cross on the level. The *locus standi* of the landowners was conceded by the promoters; but as to the petitioning ratepayers the Court in the course of argument suggested, first, that the petition did not adequately represent the body of ratepayers and inhabitants; secondly, that the road trustees were the proper persons to petition in case of apprehended in-

jury to the roads; and thirdly, that S.O. 131 only applies to petitions from inhabitants of a district under local management, and not to petitions from the population of the district through which a projected railway will pass:

Held, that the *locus standi* of the inhabitant ratepayers must be *Disallowed*; the Referees declining to depart from their rule of silence, and to indicate whether their decision was based upon this construction of S.O. 131 or upon inadequate representation by the petitioners.

The bill was one for the construction of a line about five miles in length, running from near Esher station to the village of Cobham.

The petition was a double petition, from owners and occupiers of land intended to be taken for the railway, whose names were in the first schedule, and whose *locus standi* was conceded; and from inhabitants of the district that would be traversed by the proposed railway, whose signatures were comprised in the second schedule. The petitioners objected to the undertaking because the district through which it was proposed to be carried was in no need of further railway accommodation than it already possessed, and would be injuriously affected by the bill. They also objected that the bill would authorise the company to cross the turnpike road forming the main arterial communication of the district and four other public highways on the level, and this within the short distance of between four and five miles; the effect of which would be completely to destroy the present attractions of the locality, to drive away the residents, to depreciate the value of property, and to render dangerous that pleasure traffic, the security of which formed one of the great attractions of the neighbourhood.

The *locus standi* of the petitioners was objected to because, (1) the petitioners signing in the second schedule are only individual inhabitants of the district, and the petition does not allege that it is or in any way purports to be the petition of or authorised by the body of such inhabitants, or that any meeting of such inhabitants to authorise any such petition has ever been held; (2) the petitioners signing in the second schedule are not the inhabitants of the district affected by the bill within the meaning of S. O. 131; (3) there is no allegation in the petition, nor does it appear by it that the district will be injuriously affected by the bill.

Res (Parliamentary Agent, for petitioners): The proposed railway passes through a residential district in the two parishes of Cobham and Esher, comparatively thinly populated. The total number of rated occupiers in the parish of Esher is 315, of whom one-fourth have signed the petition. The gross rateable value of the parish of Esher, according to the rate-books, is £15,400, of which the petitioners represent more than a third, viz., £5,416. The total number of ratepayers in Cobham is 450, of whom eleven

sign the petition as inhabitants in the second schedule, in addition to which five inhabitants sign as owners in the first schedule. The rateable value of the parish of Cobham is £13,482, the rateable value of the property of the petitioners in the second column being £2,068, and of those in the first column £2,531. The two points raised by the objectors are first, that the petitioners do not represent the inhabitants; and second, that no meeting of the inhabitants has been held to authorise the petition. As to the second point, in the *Liverpool Tramways Bill*, 1868, (Cliff. & Steph. 142) the *locus standi* of the petitioners was allowed, though no public meeting had been held; and in the *Great Western, Bristol and Exeter, &c., Bill*, 1867, *Petition of inhabitants of Exeter*, (Cliff. & Steph. 132) it did not appear that any meeting of the inhabitants had been held.

MR. RICKARDS: Can you cite any precedent for inhabitants of a district, through which a projected railway will pass, being heard against a bill?

REES: I cannot quote any specific precedent, but it is a matter of general practice for such petitioners to be heard. Under S. O. 131 it is competent for the Referees to admit the inhabitants of a "district."

MR. RICKARDS: The word district is an exceedingly vague word, but coupled with the word "town" I think it must be taken to have a much more limited meaning than the whole extent of country through which a line passes.

REES: It cannot be that, though inhabitants of any particular part of the whole district traversed are entitled to be heard, yet that the inhabitants of the whole district are not entitled to be heard.

MR. RICKARDS: To estimate the proportion of assents in the "district" as it may be called—that is, a certain space on each side of the line throughout the five miles—we should have to take the census of the whole population, and then see whether the petitioners could be considered as representing them.

REES: Then I propose to give you evidence on that point.

MR. RICKARDS: I do not know that we need evidence. The petitioners can only be a fraction of the inhabitants throughout the district traversed by a line five miles in length.

REES: The small number of signatures is not the fault of the opponents, but the fault of the promoters, who choose to bring a line through a district so thinly populated; but a large proportion of the rated occupiers have signed the petition.

MR. RICKARDS: I do not call 74 ratepayers out of 315 in one parish, and 11 out of 450 in the other a great proportion; 85 out of 765 in the two parishes is only a fraction: but I do not think it is a question of number.

REES: We cite as precedents the Brighton Abandonment bill, this year, in the House of Lords, and the Settle and Carlisle bill, as instances where the *locus standi* of the inhabitants of the district through which the line passed was not objected to; in those cases, however, the petitions were undoubtedly signed by landowners as well as ratepayers. We also produce

maps showing the proportion of land held by the petitioners in the second schedule as compared with that held by persons not petitioners. In considering the respective proportions there ought properly to be deducted from the total rateable value of the parish of Esher (viz., £15,391) the property of the Crown (£1,400), and the property of the South Western Railway Company (£1,260). Of the remaining £12,690 the petitioners represent £5,400, or nearly half. In the village of Esher itself substantially the whole of the population is represented.

THE CHAIRMAN: According to your figures, three-fourths of the inhabitants "in point of number, and more than half in point of value, do not join with you?"

MR. RICKARDS: That is only Esher; but if you take a certain extent on each side of the whole length of the line, and estimate the number and the value of the occupiers as compared with the number and the value of the petitioners, we shall get a much less favourable result than by looking at the parish of Esher alone.

REES: That will be so. But I am entitled to take the parish of Esher as a district by itself, and that parish is more than sufficiently represented on the petition. In the *Great Western, Bristol and Exeter, &c., Bill* there were only 14 signatures to the Exeter petition; and in the *Liverpool Bill*, out of a population of 400,000, there were only 14,000 signatures. In the *South Eastern, &c., Bill*, 1868, (Cliff. & Steph. 149), the petition of the inhabitants of Brighton and Hove was signed by a very small proportion of the inhabitants. There is no trade in this district and no agricultural population, for it is a residential district only; and the people petitioning are those who are interested in keeping the district free from railways. As to the objection that there has been no public meeting, there is no necessity for any public meeting, so long as a substantial portion of the public is represented on the petition. Then the word "district," in the S.O., cannot mean a district in the nature of a town, because the two words "town" and "district" have the disjunctive "or" between them.

MR. RICKARDS: The Referees have generally interpreted the word "district" to mean a district under local management.

REES: There is nothing in the S.O. to point to any such interpretation.

MR. RICKARDS: A great many cases have come before the Referees in which the inhabitants of districts, especially urban districts, have been objected to as not sufficiently representing the district; but I do not remember any case in which it has been held that inhabitants of scattered rural districts have a right to be heard.

REES: I know of no case in which the point has been decided; but Parliamentary agents are constantly drawing petitions like the present, and the reason probably why no objection has heretofore been raised to the *locus standi* of inhabitants of a district through which a line passes, is because in almost all cases the petition contains the signatures of landowners as well as inhabitants. Suppose a line were brought forward which was demonstrably the

very worst line for the district that could be laid out, and which went through the property of only one landowner, who assented to the bill. If the inhabitants of the district were not entitled to be heard, they would be left without remedy.

Mr. RICKARDS: The petitioners are a part of the public, representing that the effect of the construction of the railway will be to make the district in which they reside less agreeable and less desirable for the purposes of residence by the inhabitants.

Rees: They further allege that the roads will be cut to pieces and destroyed.

Mr. RICKARDS: The roads are protected by the general law, and are under the jurisdiction of the road trustees; and with regard to the position of the petitioners it is laid down in *May's Practice*, that even persons much more affected than the persons signing this petition—viz., landowners whose property is injuriously affected—have no right to a *locus standi*, unless their property is actually touched.

Rees: According to practice, though such persons have not individually a *locus standi* as landowners, yet if they combine in sufficient number to represent the wishes and views of the inhabitants, they are allowed to be heard in that capacity. In the Surrey and Sussex Abandonment Bill of this session, in the House of Lords, inhabitants of Oxley and the neighbourhood were heard after objection had been taken to their *locus standi*, the petition being signed by 53 persons. S.O. 131 was intended to provide for the case of inhabitants of a district such as the present, because there have always been parties to represent the public interests in the case of a town.

Mr. RICKARDS: Previous to the passing of S.O. 131, municipal and other authorities had no *locus standi*.

Rees: I submit that, according to the true construction of the S.O., it is intended to meet cases where there is no local authority at all.

Pugh (for promoters), was not called on.

The COURT: The *locus standi* of the petitioners in the 2nd schedule is *Disallowed*.

Rees: As this is a decision which will govern a great many cases of the like nature, will the Referees depart from their usual rule, and state whether they disallow the *locus standi* of the petitioners on the ground that inhabitants of a district like this cannot be heard, or on the more limited ground that the district is not sufficiently represented by the petitioners?

The CHAIRMAN: It is not the practice of the Court to state the grounds on which the *locus standi* is allowed or disallowed. The establishment of such a precedent may give rise to inconvenience hereafter, and we do not see any reason why, in the present case, the ordinary practice should be departed from.

Agents for Bill, C. and H. Tahourdin.

Agents for Petitioners, Dorington & Co.

EXMOUTH DOCKS BILL.

27th April, 1870.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of EXE BIGHT OYSTER FISHERY AND PIER COMPANY.

Practice—Costs—Court of Referees Act, 1867.

In the Court of Referees on questions of *locus standi* it is not the practice to give costs (see Cliff. & Steph. *Practice*, 7).

Hoskins (Parliamentary agent, for promoters): The petitioners objected to the bill as originally printed, but the filled-up bill, as it will be submitted to the committee, disposes of their objections. We, therefore, concede their *locus standi*, if they choose to incur the costs of appearing before the committee to see that the proposed amendments are made.

Nasmith (for petitioners): The petitioners are not satisfied with the alterations made in the printed bill, and we shall therefore go before the committee.

Locus standi Allowed.

Nasmith applied for costs.

The CHAIRMAN: It is not the practice of the Court to give costs.

Agents for Bill, Wyatt & Hoskins.

Agents for Petitioners, Sympton & Warner.

LANCASHIRE AND YORKSHIRE AND LONDON AND NORTH WESTERN RAILWAY COMPANIES (STEAM-BOATS) BILL.

2nd May, 1870.—(Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petitions of (1) IRISH STEAMSHIP ASSOCIATION; (2) FURNESS RAILWAY Co.; (3) STEAMSHIP OWNERS' ASSOCIATION; (4) MIDLAND RAILWAY Co.; (5) R. LITTLE and Co.

Steamboat Powers—Railway Companies—Acting Ultra Vires—Steamship Associations—Competition.

The London and North Western and the Lancashire and Yorkshire Railway Companies promoted a bill authorizing them to own and run steam-vessels between Fleetwood and Belfast. The steam-vessels already ran between these ports in the name of the North Lancashire Steamboat Company, and both companies had some years previously

acquired—*ultra vires*—a substantial interest in them. The bill was opposed by the Steam-ship and the Irish Steam-ship Associations, and by a private firm of ship-owners trading between Barrow and ports in Ireland, all the petitioners alleging that the powers sought for would create a monopoly injurious both to private shipowners and the public. The bill was also opposed by the Furness Railway Company, having its terminus at Barrow, and the Midland Railway Company, which has a port at Morecambe, and obtains access to Barrow by agreement with the Furness Company, on the ground that the competition created by the bill would be injurious to them, by tending to divert traffic from their systems; and it was argued on behalf of the Midland Company that the establishment of this steamboat communication must be treated as the construction of a new line of railway, which would entitle a competing company to appear against it, and claim protective clauses. Both the petitioning railway companies had an interest in steamers trading to Irish ports, though neither had statutory powers so to apply their funds. The promoters replied that, not being legally entitled to the steamboat powers in respect of which competition was alleged, the Midland and Furness Railway Companies could not claim a *locus standi*; while the reply to all the petitioners alike was, that no new competition was created by the bill, which merely developed an already existing competition, and this admittedly gave no ground for a *locus standi*:

Held, that the Steamship Associations, and the private firm at Barrow, might be heard against the bill; but not the petitioning railway companies.

This was a bill authorising the Lancashire and Yorkshire and the London and North Western Railway Companies to run steam-vessels between Fleetwood and Belfast. The preamble recited that the powers of the Preston and Wyre Railway, Harbour, and Dock Company were vested in the two Railway Companies promoting the bill, and under the Act passed for that purpose, certain shares in steam-vessels plying between Fleetwood and Belfast were transferred to the two Railway Companies, which had since from time to time contributed various sums of money towards the maintenance and repair of those steamers.

The Steamship Owners' Association alleged that no Parliamentary sanction had been obtained by the two Railway Companies for the application of such monies to steamboat purposes; that these Companies proposed under the

bill to unite themselves to an independent private Company, called the North Lancashire Steam Navigation Company,—the three Companies to enter into and carry into effect agreements with reference to the providing, working, and using of steam-vessels, to trade between Fleetwood and Belfast; that the effect of the provisions asked for would be to establish an unprecedented monopoly, highly injurious to the steam shipping interests of the United Kingdom, and particularly to the interests of those English and Irish Companies represented by the petitioners; that the enormous working capital of the two Railway Companies, and the control which they possessed over the land traffic, would give them a monopoly of the whole of the goods as well as the passenger traffic by sea between Fleetwood and Belfast; that the petitioners' association represented nearly 300,000 tons of steam-ship- ping, owned by persons whose steamers and other vessels traded between the various ports of England and Ireland, including the ports of Fleetwood, Belfast, and neighbouring ports; that the business of steam shipping was best carried on by private individuals and companies who embarked their whole capital and devoted their whole time and energies in its development and proper management; that, if, however, the private shipowner had to compete with parties who, like these two railway companies, had other undefined resources to fall back upon, he must succumb to such unequal competition, and either serve the public in an inferior manner, or must withdraw from the trade; that the petitioners' Association, in opposing similar applications by railway companies to obtain powers to run and own steam vessels, had always maintained that the steam trade of such companies would be carried on at a loss, and that that loss would be made good out of the resources of the railway companies, and that thus steamship owners would be compelled to compete with those companies upon unequal terms; that this had been denied by the railway companies, but had proved true in the end in almost every instance; that the petitioners were quite aware that under existing circumstances they could carry the goods-traffic, even in competition with the steam-boats owned by the North Lancashire Steam Navigation Company, more cheaply than that company, but they were not prepared to carry on that traffic at a loss, neither did they believe that the railway companies intended in future to carry the traffic at a loss permanently; that what the railway companies had done and intended for a time to do was to submit to a loss on the sea traffic so long only as would drive the private competitors out of the trade, and that after this was accomplished they would carry the traffic at such rates and at such times as would be remunerative to themselves; that the results, therefore, of granting the powers now sought would be that, by charging unremunerative rates for a sufficient length of time to put an end to free competition, the promoters of the Bill would secure the whole trade in their own hands, and then increase the rates to such a point as would reimburse them for past losses.

The petition of the Irish Steamship Association was to the like effect.

The petition of the Furness Railway Company alleged that they had at present a system of railways in connection with the Midland and so with a great part of England, by which minerals, goods, and merchandise and traffic of all kinds, were brought to a place called Piel Bay, Barrow Harbour; that from Barrow Harbour there was a large traffic carried on by steam-boats to Ireland, which was practically the same route as the communication between Fleetwood and Belfast, and that the parliamentary powers now for the first time sought by the promoters for authorising the establishment of this steam-boat communication would create a competition and result in a monopoly injurious to the petitioners.

The petitioners, R. Little and Co., were the registered proprietors of steamboats plying between Piel Pier and Belfast, trading under the name of the Barrow Steamboat Navigation Company; and they objected to the bill on the same grounds.

The petition of the Midland Railway Company set forth that the petitioners were carriers of goods between the various parts of England traversed by their railway, and Ireland, and they were competitors with the Lancashire and Yorkshire and London and North Western Companies in the conveyance of such goods; that it was of great importance to the petitioners, and also to the public interested in the traffic between England and Ireland, that a fair and reasonable competition should be maintained between English railway companies; that the bill proposed a virtual partnership between the two promoting companies for the carrying on of this traffic; and that a competition carried on under such conditions would be injurious to the petitioners.

The objections to the *locus standi* of all the petitioners were—1. The bill does not contain any provisions under which the promoters would be enabled to set up any competition with the petitioners other or greater than already exists, or they are at present able to set up. 2. The allegations in the petition as to an existing monopoly of traffic and the possible diversion of traffic, increased charges, diminished accommodation, and other evils of monopoly, if such allegations were well founded (which the promoters deny) are not such as according to the practice of Parliament entitle the petitioners to be heard against the bill. 3. The petitioners do not allege any such competition or interference with competition as according to the practice of Parliament entitles them to be heard. 4. The bill does not contain any provision authorising an interference with any property, rights, powers or privileges of the petitioners. 5. The petition does not contain any allegations upon which, according to the practice of Parliament, the petitioners are entitled to be heard. To the *locus standi* of the Midland Company the following additional objection was taken:—6. The allegations as to the alleged partnership or coalition which will or may be effected under the provisions of the bill to the prejudice of the petitioners are not such as, according to the practice of Parliament, entitle the petitioners to be heard.

Rodwell, Q.C. (for the Irish Steamship and

Steamship Owners' Associations): Since 1847 a *locus standi* has always been allowed us against bills of this description. S. O. 153 provides that no railway company shall be authorised to acquire or use any steam vessels, or apply any portion of their capital to other objects distinct from the undertaking of a railway company, unless the Committee on the bill report that such a restriction ought not to be introduced, "with the reasons and facts upon which their opinion is founded." The petitioners are the only parties who can properly and efficiently raise these questions for the consideration of the Committee, or who can enable the Committee to state "the reasons and facts upon which their opinion is founded." The S. O. shows that the parties who framed it did not intend that such bills should be passed *sub silentio*, and a Committee of the House proposed to alter the Standing Order, but the House would not make such alteration. Moreover, S. O. 160 was passed with the very object of giving the steamship owners an opportunity of being heard against such bills, in consequence of the London, Chatham, and Dover Company having smuggled into a bill for metropolitan improvements very large powers to run steamboats. As bearing on the question of competition I may refer to the London and North Western Time-table, which contains the following advertisement:—"Special return-tickets are issued at Belfast for the convenience of London passengers calling at Liverpool. Passengers are booked through from London, Birmingham, Wolverhampton, Worcester, Manchester, Liverpool, Leeds, Preston, and Fleetwood to Londonderry, Portrush (for Giant's Causeway), and all the principal towns in the North of Ireland, and *vice versa*." "Shippers of merchandise and live stock will find this an expeditious and advantageous route to and from all towns in England and Belfast, Londonderry, Cookstown, Armagh, Monaghan, Clones, Omagh, and all towns in the North of Ireland, combined with moderate rates." The Lancashire and Yorkshire Company came in the year 1862 with a bill to work steam and other vessels between Fleetwood and any other port in England and Ireland, and on the opposition of the Steamship Owners' Association the steamboat clauses were struck out of that bill. Dealing with the first objection, I submit that if at present the London and North Western are owners of shares in the steamboats plying between Fleetwood and Belfast, and they are not in law authorised to be part owners of those steamboats, they are not entitled to insist that a competition already exists, because it is competent for any shareholder, at any moment, to go to the Court of Chancery, and stop the Company from embarking their capital in the steamboats. No such competition can be legally carried on, and the case must be treated as if there were no competition. As to the second objection, the advertisement I have read shows that the promoters themselves put forward their route to the public as the best mode of communication from England to Ireland. The effect of the bill will be to establish a monopoly disadvantageous to everybody; and the promoters will be enabled to drive all other steamship competition out of the field by arrangements which

they will then be able to make legally, but which now they can only make illegally, and to a modified extent; the fact being that directly the power is legalised the competition will be much more serious than it is at present. If the bill is passed the promoters will seek to get all the traffic they can; they will care nothing about the earnings by water so long as they can induce passengers to travel by their railway. With respect to the third objection, the practice of Parliament has been uniform, viz., to allow the steam-shipping interests to be heard against such bills; but irrespective of the practice, I claim the right to be heard. In the *Aberystwith and Welsh Coast Railway (Steamboats) Bill* (Fawcett, 98-100) a member of the Court said in the course of argument that if steamboat owners were not heard, such a bill would be unopposed; the *Eastern Bengal Case* (Smeth. 148), is also in point. In the *Great Eastern Bill*, 1869, no objection was taken to the *locus standi* of steamboat companies in the other House. That is the latest case.

Price, Q.C. (for Furness Railway Company and R. Little and Company): No doubt a competition already exists in the steamboat communication between Fleetwood and Belfast, but the position in which the Company stand is this:—The Furness Company are carriers by land; the Barrow Steamboat Company are carriers by sea; and between these two companies there is an arrangement analogous to that existing between the London and North Western and the Lancashire and Yorkshire, and the Steamboat Company navigating between Fleetwood and Belfast.

Mr. RICKARDS: Are these the only companies carrying on traffic by steam between Fleetwood and Belfast, and have the Furness Railway Company any Parliamentary power to apply their capital to steamboats?

Price: They are the only companies which have traffic between Fleetwood and Belfast. The Furness Railway Company have no Parliamentary power to apply their capital to steamboats. The Furness Company bring the traffic to the water's edge, and thence it is taken across to Ireland by a Steamship Company, in which a number of persons forming the Furness Company are deeply interested as private individuals. The persons signing the petition of the Barrow Steamboat Company (Little and Company) are the registered owners of the boats, but the Furness Company are joint owners. The Furness Railway, in connection with the Midland, afford communication for minerals and traffic between places with which the two systems communicate and the port of Barrow, which port the Furness Company have in fact created. Under these circumstances the Furness Company can at present make any arrangements they like with the Steamboat Company plying between Barrow and Belfast; but if Parliament, without allowing the Furness Company to be heard, authorises a steamboat communication between practically the same points of the two coasts in the hands of the Lancashire and Yorkshire and the London and North Western, those two powerful companies will divert the traffic from the Furness Company, and the money we have laid out on the harbour of Barrow will be entirely thrown away. I admit that a *locus standi*

is not allowed in cases where an existing competition is increased, yet parties have been allowed to be heard where the competition is changed in character and introduced from a new quarter (Cliff. and Steph. *Practice*, 64). Here the competition, instead of being carried on by a Steamboat Company, will be carried on by two Railway Companies, because the steamboat communication will under the bill become part of the railway system. Parliament has always watched with jealousy attempts made by Railway Companies to take steamboat navigations into their hands. And railway companies in the position of the Furness Company are entitled to go before the Committee and represent how their interests and the interests of the public will be affected so that the whole case may be laid before the Committee. If this bill is passed without hearing the Furness Company and the Steamboat Associations, Parliament will be legislating in the dark as to the requirements of the public and the London and North Western and Lancashire and Yorkshire Companies will be able to divert the traffic in any way to suit their own purposes long before we can come to Parliament in order to place ourselves in an equivalent position. Part of the capital of the Furness Company being embarked in the Steamboat Company, both in that character and as carriers on land, this proposal may do us irreparable injury. On behalf of R. Little and Company I refer to and accept as part of my argument the passage (Cliff. and Steph. *Practice* 82) in which the *locus standi* of private steamship owners is declared to have been conceded both by Committees and by the Referees; and again, the concluding passages of the chapter on competition (p. 83). When parties asking for a *locus standi* have an obvious interest in the subject-matter of the bill it seems just that they should be heard before the Committee on the Bill.

Venables, Q.C. (for Midland Railway Company): We are in the same position as the London and North Western and the Lancashire and Yorkshire, with regard to connection with the Steamboat Navigation, i. e., we are, jointly with the Furness Company and others, owners of steamboats plying between Barrow and Belfast, not having statutory power to apply our funds to such purposes. But the Midland Company do not claim a *locus standi* in respect of their interest in, and their profits from, the steamboat communication, inasmuch as they are carrying on that steamboat communication without legal power to do so. At present all the Railway Companies are in the same position in that respect, but under the bill the promoters will have the exclusive legal right of conveying traffic between ports in Lancashire and Belfast as against the Midland and Furness Companies. We, therefore, ask to be heard against a bill promoted by two competing railway companies for the purpose of establishing a new competition. The English Railways on one side, and the Irish Railways on the other side form at present one continuous route, of which the sea route is the connecting link, and we say that that link ought not to be put into the hands of the London and North Western and Lancashire and Yorkshire. Suppose this were land instead of sea, all the

railways terminating on the coast of Morecambe Bay, and the Lancashire and Yorkshire and the London and North Western Companies projected a line continuing the route, the Midland Company would have a right to claim a joint ownership in the route, or running powers and facilities, or would be entitled to promote a competing scheme.

Mr. RICKARDS: Do the Midland claim to have any connection with the lines on the other side of the Channel?

Venables: Yes they do, but not by special agreement.

Mr. RICKARDS: How can the Midland Company allege competition as against the proposal of the promoters to cross the sea by legal powers when the legal position of the three companies appears to be that their respective systems terminate at the water's edge?

Venables: The Midland Company allege in their petition that they compete for traffic beyond the sea, and it must be assumed that there is a way of getting across in independent hands, for none of the Companies have legal powers to control it. That communication will cease to be in independent hands as soon as it is appropriated as proposed by the promoters, and unless the Midland have an opportunity of going before the Committee and proposing stringent clauses, securing to them protection in the matter of the sea traffic, they will not be able to get to Ireland at all. This is in fact an amalgamation. The London and North Western and the Lancashire and Yorkshire propose to amalgamate with those who convey the traffic across from Morecambe Bay to Belfast.

Mr. RICKARDS: They do not propose to amalgamate with any other parties, but they propose to carry on the communication themselves.

Venables: That is so. But in form that is an amalgamation, because the two Companies take power to agree with the North Lancashire Steamboat Company. Under this bill a partnership will be formed between the London and North Western and the Lancashire and Yorkshire. It is by no means the same thing for the Midland to compete with those two Companies working separately, and to compete with them working as partners. When those two Companies become partners in the steamboat communication, their competition will be of quite a different character from that which exists at present, and a new competition will substantially be established. *Midland Railway (Settle and Carlisle) Bill, 1869. Petitions of Lancashire and Yorkshire and North British Companies (Cliff. and Steph. 83).*

Pope, Q.C. (for promoters): With respect to the cases of the steamship owners it cannot be contended that whenever railway companies seek for power to apply their capital to steamboat purposes, steamboat companies, trading anywhere and located anywhere, are *ipso facto* entitled to be heard. The Peninsular and Oriental Company, for instance, could not possibly be entitled to a *locus standi* against this bill. Competition is not an absolute but a discretionary ground of *locus standi*; the Referees will consider the circumstances of each case, and decide whether the interests involved and the

competition disclosed are of such a character as justify them in admitting the parties to a *locus standi*. The question is whether the competition here is such as will induce the Court in the exercise of its discretion to grant a *locus standi*. It is admitted that mere improvement in an existing competition gives no ground for a *locus standi* (Cliff. & Steph. *Practice*, 64; Smeth. 55). The facts with regard to the steamboat communication between Fleetwood and Belfast are as follow:—In 1838, the Preston and Wyre Railway Company was established, and had the same interest as the promoters possess in the steamboats plying from Fleetwood to Belfast, but had no statutory power to embark capital in steamboats. In 1849 the Preston and Wyre Company amalgamated with or was leased by the Lancashire and Yorkshire; ultimately the London and North Western took a joint interest in the line in certain proportions; and, as a portion of their heritage, the interest which the Preston and Wyre had in the steamboats passed to these two companies under the words "land, money, goods and chattels, and all other real and personal estate."

Rodwell: There is not one word about steamboats.

Mr. RICKARDS: The steamboat powers were assumed by the Preston and Wyre Company, and those assumed powers were taken over by the London and North Western, and the Lancashire and Yorkshire, together with the legal powers.

Pope: The competition has been as effective since 1849 as it can become now. The bill will not establish a new competition, and will not alter the character of the competition. It is merely for the purpose of improving or making more effective the existing competition. The only ground upon which the steamship owners can possibly claim a *locus standi* is that the existing competition is not a competition under Parliamentary sanction, and that the bill will create a difference in its character. But practically the two companies possess as great an interest in the steamboats now as they will have under the bill. As to the advertisement which has been quoted to show a monopoly, it only points to competition; and in another advertisement, issued by the Midland Company, the Furness and Barrow route is pointed out as being the best. With regard to the Furness Company, the competition as far as they are concerned is not going to be altered, and as the competition which they carry on is not a competition carried on under Parliamentary sanction, they cannot claim a *locus standi* (Smeth. 49). As to Little and Company, the general argument on the case of the steamship owners applies to their claim to a *locus standi*. In the hypothetical case put of a line of railway from Fleetwood to Belfast, supposing the route were land instead of sea, the Midland Company could have nothing to say to such a line; and they cannot ask Parliament to give them joint ownership in a line which does not come within forty miles of them.

Venables: The Midland come to the sea at Morecambe.

Pope: Morecambe is not Fleetwood. No doubt the Midland are on the most friendly terms with

the Furness Company, and run to Barrow by agreement, and no doubt they have for the sake of convenience transferred their steamboat communication from Morecambe to Barrow; but as far as Midland rights are concerned they end at Carnforth Junction. The only ground upon which the Midland Company could be entitled to a *locus standi* would be supposing they had an existing line of railway from Barrow to Belfast, and somebody came to project a line from Fleetwood to Belfast, in competition with that existing line; but, as it is, they cannot be entitled to a *locus standi* on the ground of competition. The only difference between the state of things that has existed for twenty years, and the state of things under the Bill, will be that the competition which has been carried on without Parliamentary sanction will in future be carried on with it.

The REFEREES (after deliberation) Allowed the *locus standi* of the Irish Steamship Association, the Steamship Owners' Association, and of R. Little and Company: Disallowing the *locus standi* of the Furness Railway Company and the Midland Railway Company.

Agents for the Bill, *Sherwood & Co.*

Agents for the Steamship Associations, *Bryden & Robinson.*

Agent for the Furness Railway Company, and for Little and Company, *H. Toogood.*

Agents for the Midland Railway Company, *Dyson & Co.*

LONDON AND NORTH WESTERN RAILWAY (ADDITIONAL POWERS) BILL.

2nd May, 1870.—(Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS).

Petition of TRADERS AND FREIGHTERS using the CARNARVONSHIRE RAILWAY.

Railway—Amalgamation—Omnibus Bill—Traders and Freighters—Apprehended Diversion of Traffic—and Injury to Trade.

A bill promoted by the London & North Western company sought power (*inter alia*) to acquire the Carnarvonshire railway by amalgamation. A petition was presented by traders and freighters using the Carnarvonshire line, who complained that the North Western might hereafter force on to their own system traffic which would pass more naturally and directly over the Cambrian and Great Western lines. It appeared that the Cambrian had running powers over the Carnarvonshire railway:

Held, that the diversion of traffic and monopoly here apprehended did not entitle petitioners to a *locus standi*.

(*Per Cur.*) "Freighters are not, as a matter of course, heard against amalgamation bills. It is necessary for them to show that the bill will be detrimental to them in some respects;" though apparently it is not necessary to show that tolls will be increased under the bill.

This was an omnibus bill, and proposed, *inter alia*, by clause 38 that upon agreement with the Carnarvonshire railway company that undertaking should be vested in the London and North Western railway company as part of their undertaking. The petitioners were traders and freighters using the Carnarvonshire and the Cambrian railways. They alleged that they were deeply interested in the efficient conduct of the traffic on those lines, and also in the trade of the district; that it was important to them that the traffic destined to pass from the Carnarvonshire line to various parts of the country, and *vice versa*, should not be diverted over the North Western system, but should be allowed to pass without restraint over the railways of the Cambrian and Great Western companies; that any such diversion would be most injurious to the petitioners, and that under the bill the North Western Company would practically obtain a monopoly of the traffic of the district; that there was no necessity whatever for the proposed powers, but that, at all events, clauses should be inserted securing facilities to the petitioners' traffic to and from the Cambrian and Great Western railways; and that running powers over the Carnarvonshire line should be conferred on the Cambrian and Great Western, and on any other company that might hereafter establish themselves in the district.

The *locus standi* of the petitioners was objected to, because (1) they had not such an interest in the traffic and (2) the apprehended diversion of traffic was not such as according to practice entitled them to be heard; (3) the petition did not allege or disclose any sufficient case of competition or interference with competition; (4) it was not alleged that the tolls, rates, or charges payable in respect of traffic of the petitioners would be in any way affected by the vesting of the Carnarvonshire railway in the London and North Western company, nor did the bill increase or alter the tolls, rates, and charges; (5) there was no allegation upon which, according to practice, they were entitled to be heard.

Cripps, Q.C. (for petitioners): This is an omnibus bill. The part to which petitioners object is that which takes power to amalgamate the Carnarvonshire railway with the large system of the London and North Western, and provides that the Carnarvonshire railway shall thereupon be dissolved, except for the purpose of winding-up its affairs. Petitioners are traders and freighters using the Carnarvonshire and the Cambrian railways, and are also much interested in the trade of the district. It would

be most injurious to us if the London and North Western were allowed to become owners of the Carnarvonshire railway, as they would divert all the traffic of the district traversed by that railway to their own system. According to the ordinary principle applicable to amalgamation bills, traders and freighters on the line are entitled to be heard, more especially where, as in the present case, a small line is to be absorbed in the system of a great company. It is not suggested by the objections that we do not represent a class of traders. The petitioners comprise a great many owners and workers of slate quarries, agents of slate quarries, persons interested in the staple trade of Carnarvon, and merchants and tradesmen of Carnarvon, all of whom use the railway, there being no other town than Carnarvon on the line.

The CHAIRMAN: Who work the Carnarvonshire Railway?

Cripps: The London and North Western company. At present, the line has two communications, one with the Cambrian, and so with the Great Western railway; and the other with the London and North Western railway. But if amalgamated with the London and North Western, it is clear the Carnarvonshire will lose its individuality. A trader at Carnarvon, or at the slate quarries, desiring to communicate with Shrewsbury, may do so now by the route which he finds shorter and more convenient—that of the Cambrian and Great Western railways; but the London and North Western will have a way of going to Shrewsbury also, and will keep the traffic on their own line. So also as regards traffic to Newtown.

Mr. RICKARDS: Freighters are not, as a matter of course, heard against Amalgamation Bills. It is necessary for them to show that the bill will be detrimental to their interests in some respect.

Cripps: It is necessary for them to show a grievance; and an amalgamation is a grievance, inasmuch as it alters the existing relations between the parties. An independent line has no other interest than to develop traffic and convey it by the best route; but when amalgamated with another line, it may have interests of an entirely different kind. A monopoly will here be created in the hands of the London and North Western.

Sir JOHN DUCKWORTH: Have the Cambrian railway running powers over the Carnarvonshire railway?

Cripps: Yes, but these may be rendered nugatory, when the line is transferred.

Merevether, Q.C. (for promoters): The Cambrian Company do not petition against the bill. The Great Western, who are no nearer than Dolgelly to the Carnarvonshire railway, did petition, but have withdrawn, leaving this petition to be conducted by their own agents. The petitioners have no right to point to the Cambrian and the Great Western as giving them a route to Shrewsbury as against the North Western. No such route exists, there being a part, between the Great Western and the Cambrian from Penmaen Pool to Dolgelly, not yet constructed, though authorised.

Cripps: There is another way to Shrewsbury by Buttington.

Merevether: Freighters and traders are only allowed a *locus standi* when they come to complain that something is proposed in the Act which would raise the rates and tolls.

Mr. RICKARDS: Or that they are otherwise aggrieved.

Merevether: In the *Manchester, Sheffield and Lincolnshire Bill* 1865, where the petition was silent with reference to rates and tolls, the *locus standi* was disallowed (Fawcett, p. 65).

Cripps: The petitioners do not object to the bill on the ground that the rates and tolls will be affected.

Merevether: As to the apprehension of monopoly, the Cambrian railway have running powers over the whole of the Carnarvonshire line, and accordingly can go to the Carnarvonshire, and carry traffic to all places with which the Cambrian railways communicate. The last paragraph of the petition shows in what interest the petition was drawn up, for it states that in case the bill be passed, running powers over the Carnarvonshire railway should be conferred on the Great Western and Cambrian railways, or on any other railway company who may establish themselves in the district.

The CHAIRMAN: Notwithstanding that paragraph, are we to understand that running powers over the Carnarvonshire are already possessed by the Cambrian?

Cripps: Yes.

Locus standi Disallowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Martin and Leslie.*

LONDON AND NORTH WESTERN RAILWAY (STEAM VESSELS) BILL.

2nd May, 1870.—(Before Mr. ST. AUBYN, M.P., in the Chair; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of (1) IRISH STEAMSHIP ASSOCIATION; (2) STEAMSHIP OWNERS' ASSOCIATION; (3) DUNDALK STEAM PACKET COMPANY; (4) GREAT WESTERN RAILWAY COMPANY.

Steamboat Powers—Railway Companies—Opposition by Steamship Owners not trading between ports included in Bill—Sea and Land Competition, Distinguished—Steamboat facilities—Secured to Railway Companies by existing Acts.

The North Western Railway Company promoted a bill extending the time for owning and running steamboats between Holyhead and Dublin, and also empowering the Company to provide steam and other vessels to run between Holyhead and Greenore, and other

ports in the Lough of Carlingford. Two steamship associations and a steamboat company petitioned against the second portion of the bill; and their *locus standi* to that extent was allowed, though none of the petitioners owned vessels running between Holyhead and Greenore, or any other ports in Carlingford Lough: the principle adopted by the Court being that if traffic were diverted from vessels belonging to the petitioners and engaged in the same trade, though using other harbours, that was a competition entitling such petitioners to be heard. The Great Western Railway Company likewise petitioned, on the ground that the bill withdrew safeguards which had been introduced at their instance into former Acts obtained by the North Western Company. It was contended that these safeguards were not impaired by the bill, and that in any case the *locus standi* of the petitioners should be limited:

Held, however, that the *locus standi* must be without limitation.

The object of the bill was first, to extend for a further period of fourteen years the power in relation to the purchase, hiring, using and owning of steamboats plying between Holyhead and Dublin; and, secondly, "to establish an improved communication between Holyhead on the one hand, and Greenore and other ports in the Lough of Carlingford on the other hand, and to provide steam and other vessels for the purpose." The Steamship Associations, who were petitioners, did not object to the extension of powers sought for in respect of the steamers plying between Holyhead and Dublin, but opposed the other portion of the bill for improving the communication between Holyhead and the Lough of Carlingford. In their petition the Dundalk Steam Packet Company alleged that the steamboat powers sought for under the bill must injuriously affect the long-established trade between Dundalk and the English ports in which sundry steamship owners represented by the petitioners were interested; and that by means of the Dundalk Steam Packet Company (which was established in 1858), a number of fine steamships plied regularly between the ports of Dundalk and Liverpool, and between Warcuppoint and other ports. The Steamboat Associations, in their petition, alleged that they ran vessels from Liverpool to Dublin, Belfast, Drogheda, Dundalk, Londonderry, Newry, Portrush, Glasgow, Warrenpoint, and also from Belfast to Liverpool, Maryport, Morecambe, Fleetwood, and Whitehaven, and they complained of the injury which would be caused to their traffic through the competition of the steamboats of the railway company under the bill.

The case of the Great Western Railway Company against the bill was as follows:—When the Great Western and West Midland Amalgama-

tion Bill, 1863, was passing through Parliament, an agreement scheduled to that bill was come to between the London and North Western and the Great Western, by which facilities were given to the North Western for the purpose of enabling that Company to compete with the Great Western at various points, principally in South Wales, for traffic over which otherwise the amalgamated Company would have had the sole control: and powers were given to the Great Western to make arrangements for through booking and facilities with any railway company in Ireland or steamboat company between England and Ireland, *via* the Chester and Holyhead Railway, on the same terms and conditions as the North Western Railway Company who were to afford full facilities for Great Western traffic. When that bill came before the House of Lords, at the suggestion of the Committee, and with the consent of both companies, a clause was added to the Amalgamation bill (Sec. 64) providing for through booking arrangements and facilities with Irish companies, so that as full facilities should be given by through working and otherwise, not only in the interest of the Great Western, but in the interest of the public, to traders and passengers to travel and to send goods from any port in the south-west of England to Ireland as if they had come to London, or as if they had joined the North Western at any other point. In 1864 an Act was passed called the London and North Western Traffic Arrangement Act, the object of which was to enable the Company to enter into arrangements with railway companies in Ireland, and with steamboat companies between England and Ireland. The third section authorised the London and North Western on the one hand, and the Irish North Western and the Dundalk and Greenore (now practically a part of the London and North Western by arrangement) and a variety of other Irish railway companies on the other hand, to make arrangements for the transmission of traffic over the railways of the respective parties, and for the apportionment of tolls. The 4th clause enabled the North Western and the different Irish railway Companies "on the one hand, and the City of Dublin Steam Packet Company, the Dundalk Steam Packet Company (Limited), or any other company or person, owners, or proprietors from time to time of steam packets or other vessels, on the other hand, from time to time to enter into and carry into effect, and from time to time alter and vary arrangements and agreements with reference to the transmission and interchange of traffic between the ports of Dublin, Kingstown, Dundalk, Greenore, and Carlingford Bay, or any of them, and the ports of Liverpool and Holyhead, or either of them, and with reference to the fixing, ascertaining, division, and apportionment between the parties to such arrangement or agreement of the tolls, rates, and charges arising from such traffic." Upon the opposition of the Great Western Company, Clauses 5 and 6 were introduced; the 5th clause providing that every such traffic agreement should be in writing, and that it should be printed in the *Gazette*, and a copy sent to the

Board of Trade; and the 6th clause providing that "The said Irish railway and steam packet companies, or any other company or person, owners or proprietors of steam packets or other vessels respectively, who may have entered into any agreement authorised by this Act, shall, if required, enter into a similar agreement with any company or person not parties to any such agreement, and being owners of a railway, or canal, or navigation, and being carriers of traffic passing between England and Ireland, and such similar agreements shall provide that the said contracting companies shall not demand or receive upon traffic from or to any English port or place, to or from which such owners of a railway, or canal, or navigation carry traffic, any greater rate or charge, whether by sea or by land, than is demanded and received by such contracting parties severally, upon traffic conveyed by them under the agreements entered into by them under the powers of this Act." That provision was inserted for the purpose of protecting the English railway companies from a monopoly on the part of the London and North Western by any arrangement they might make with the Irish companies. Then in 1867, in the Dundalk and Greenore Act (which authorised an arrangement between the London and North Western and the Dundalk and Greenore) upon the opposition of the Great Western, similar clauses were inserted to those inserted in the London and North Western Traffic Arrangement Act, 1864. The bill proposed to enact that the London and North Western Company might, for the purpose of establishing in connection with their undertaking an improved and efficient communication between Holyhead, on the one hand, and Greenore and other ports in the Lough of Carlingford on the other hand, build, purchase, hire, provide, charter, employ, and maintain steam and other vessels of every or any description, and might navigate, work, and use the same, and therein and thereby convey and carry passengers, animals, minerals, goods, and merchandise of every description between Holyhead on the one hand, and Greenore and other ports in the Lough of Carlingford." The petitioners complained that the bill did not incorporate the Act of 1863, by which they would be entitled to a hearing before the Board of Trade, as to any arrangement which the London and North Western might make; and that the Great Western would thus be deprived of the protection they now enjoyed.

The *locus standi* of the Irish Steamship Association was objected to on the following grounds: (1) the allegations of the petition as to the contemplation or possible establishment under the provisions of the bill of a monopoly to the prejudice of the petitioners, if such allegations were well founded (which the promoters deny), are not such as according to the practice of Parliament entitle the petitioners to be heard; (2) the petition does not allege or disclose any such competition, or interference with competition, as according to the practice of Parliament entitles the petitioners to be heard; (3) the bill does not contain any provision authorising an interference with any property, rights, powers or privileges

of the petitioners; (4) the petition does not contain any allegation upon which, according to the practice of Parliament, the petitioners are entitled to be heard.

The objections to the *locus standi* of the Steamship Owners' Association, and the Dundalk Steam Packet Company were to the same effect.

The *locus standi* of the Great Western Railway Company was objected to because (1) the petition does not allege that the bill contains, nor does the bill contain, any provision expressly interfering with any property, right, power, or privilege of the petitioners, statutory or otherwise; (2) if any such interference be involved in or consequent upon any provision of the bill, it is not such an interference as entitles the petitioners to be heard; (3) the petition does not allege or disclose any such case of competition, or interference with competition, as, according to practice, entitles them to be heard; (4) the allegations are insufficient.

Rodwell, Q.C. (for the Steamship Associations and the Dundalk Steam Packet Company): The general arguments I have used on the *Lancashire and Yorkshire and London and North Western Steamboats Bill* (*ante*, 59) apply here. The difference between the two cases is in my favour: it is the fact that at present there is no competition, legal or illegal, direct or indirect, between Holyhead and Greenore. The existing routes between England and Ireland, with which the proposed communication (a distance of 79 miles) will compete, is the line between Liverpool and Greenore, a distance of 135 miles, and the line between Liverpool and Dundalk, besides other routes.

Mr. RICKARDS: Do the petitioners carry goods or passengers between Holyhead and Greenore?

Rodwell: It is not necessary for me to show that, nor have the decisions ever recognised such a test. In the *Great Eastern Steamboats Bill*, 1869, for establishing a communication between Harwich and Hamburg, the Steamboat Companies were allowed a *locus standi*, though they had no vessels running between Harwich and Hamburg, the petitioners' steamers running between London to Hamburg and from Hull to Hamburg. The question was whether the traffic should be diverted from those or other points into the new channel opened by the Great Eastern Company. This case is completely on all fours with the Great Eastern bill, and on the principle then established we ought to be heard. Our case is also strengthened by the facts set forth in the preamble, that the London and North-Western Company were empowered to subscribe towards the undertaking of the Dundalk and Greenore Company, and that the Dundalk and Greenore on the one hand, and the Irish North-Western and the promoters on the other hand, were empowered to enter into contracts "with respect to the management, use, working, and maintenance of the railways of the Dundalk and Greenore Company, and otherwise in relation thereto." So that, if the bill is passed, an enormous power will be thrown into the hands of the London and North-Western Company. They came before Parliament in 1867 without the slightest

suggestion that they intended to apply for steamboat powers; and, now in 1870, having obtained piecemeal powers with respect to railways in Ireland, they come with a bill to make a connecting link between their system at Holyhead and the system with which they have relations in Ireland, by means of steamboats competing with those of the petitioners. Now it is notorious that railway companies possess the means of adjusting the rates for land carriage to those charged for water carriage in such a way as to preclude competition on the part of private shipowners; and we ask that we may be allowed to appear for the purpose of inserting clauses for our own and for the public protection.

Mr. RICKARDS: On the ground of competition?

Rodwell: Yes.

Mr. RICKARDS: Do you apply a different principle in the case of competition at sea, from that which is applied on land?

Rodwell: The difference is this: competition at sea must of necessity be limited, as regards the points from which it is carried on, by the position of harbours, their easy or difficult access, and by other physical considerations. On land, you would not have the right to appear indefinitely against a railway with which you were not in competition between point and point. At sea, through obvious geographical limitations, there can be but few points of departure or arrival; and the degree and mode in which competition arises cannot be, and is not, so strictly viewed as in the case of two competing railways. Any change, therefore, which interrupts an existing traffic by sea may be questioned before a Committee of the House of Commons when a railway company tries to possess itself of the traffic.

Mr. RICKARDS: Still, a line must be drawn somewhere. Because your Company now runs from Liverpool to certain ports in Ireland you can hardly contend that no railway company ought to be entitled to establish a line of steamers from any one port in England to any one port in Ireland. There must be some limit to determine what is practically competition. In the last case it was competition simply between Fleetwood, or the neighbourhood of Fleetwood, and Belfast: it was the same route in fact. But here the points of departure, Holyhead and Liverpool, are rather wide apart. How do you establish your more general proposition? I suppose the question is whether your business as a Steamboat Company may be injured by the new competition now proposed?

Rodwell: Yes, that is so. We say that the traffic which now goes from Liverpool to Dundalk will be diverted by the North Western, when they communicate between Holyhead and Greenore. In the *Great Eastern* case we had nothing to do with steamboat communication between Harwich and Hamburg, but were allowed a *locus standi*, though our boats went only from London to Hamburg and from Hull to Hamburg. This view of competition at sea has always influenced Committees in dealing with the steamboat bills of railway companies. Thus, against the original proposal to run steamers from Holyhead to Dublin in 1847 and 1848 the

Dublin Steam Packet Company, who ran boats from Liverpool to Dublin, were heard. Again, in 1861, when the London and North Western applied for a renewal of the steamboat powers granted to the Chester and Holyhead Company, the Steamship Owners' Association, the steamship owners of Liverpool, and owners of steam vessels, were heard. This is an analogous case.

Saunders (for the Great Western Company): It was part of the agreement scheduled to the Act of 1863 that the London and North Western and the Great Western Companies should give to each other mutual facilities. Under the Act of 1864 the North Western Company may make arrangements with the Dundalk Steam-packet Company, which is the only company carrying passengers from Dundalk to England; but any such arrangement must have been entered into publicly, and so would have become known to the Great Western Company, who might have opposed it before the Board of Trade, and also might have insisted upon a similar arrangement being made with regard to themselves. Now, the North Western are promoting a bill which destroys those safeguards.

Mr. RICKARDS: Does the bill repeal any protection which the Great Western have at present?

Saunders: Not in so many words, but the effect of it is to give the promoters a power to do that which they cannot do at present, and which will effectually prevent the Great Western Company from having that free communication with Ireland heretofore provided by Parliament, and secured by clauses in former Acts. If what is now proposed under the bill were done under existing Acts, we should be entitled to exactly the same facilities as the North Western have, and so practically this bill abolishes our existing protection. Under the clauses of the Act of 1864 the North Western have made an arrangement with the Irish railway companies, which has come to our knowledge within the last three weeks through notices in the *Gazette*, that arrangement being one guaranteeing the Irish companies five per cent. dividend. The result will be that under that agreement and the powers in this bill enabling the Dundalk and Greenore Company to become joint owners of the steamboats with the North Western, the interests of those two Companies will be so identified that there will be no chance of our ever getting any portion of the traffic. *The Dundalk and Greenore Bill, 1867, Petition of the Ulster Company* (Cliff. & Steph. 107-8) is a case in point. As long as the communication between England and Ireland is in the hands of the City of Dublin Steam Packet Company as regards Holyhead, and in the hands of the Dundalk Steam Company as regards Dundalk, the Great Western are perfectly safe, because any agreement entered into with them by the promoters would be an agreement in which we should be entitled to share. This is an attempt to get rid of that safeguard by a side-wind. An arrangement like the one now proposed is tantamount to an amalgamation; it is a partial though not a complete amalgamation, and in many cases railway companies and traders have been allowed to be heard against bills which, though not in form amalgamations, yet practically amounted

to amalgamations (*Great Western, Bristol and Exeter, &c., Railway Companies Bill, 1867, Cliff. and Steph. 132; South Eastern and Brighton, &c., Railway Companies Bill, 1868, Ib. 103 and 149; and North Staffordshire Railway Bill, 1867, Ib. 102*). At present we send a large amount of traffic from Birkenhead to Dundalk by the Dundalk Steam Company's boats, and we send traffic also by Holyhead over the Chester and Holyhead Railway, under the Act of 1863. If under this bill the North Western and Dundalk and Greenore (perhaps in conjunction with the Dundalk Steam Packet Company) set up an effective line of communication between Holyhead and Dundalk, they will shut up the route between the Mersey and Dundalk or Greenore. Therefore if the Great Western do not get the protective clauses usually given by Committees, they will be damaged. This is not only a virtual amalgamation but an amalgamation of a railway with a steamboat company, a case specially provided for by S. O. 153. In the *Swansea Canal Transfer Bill, 1866*, the *locus standi* of three separate traders, who appeared on three separate petitions, was allowed, this decision being probably influenced by the fact that the bill was for the purpose of transferring a canal to a railway company, such a transfer, as in the case of steamboats, going beyond the objects for which the company was originally incorporated, and being contrary to the general principle adopted by Parliament (*Cliff. and Steph. Practice, 51*).

Merewether, Q.C. (for promoters): In the last case the competition had, up to this time, been carried on illegally. Practically, in this case, we have had Parliamentary sanction for steamers from Holyhead to Greenore since 1864. Clause 4 of the Act of 1864 empowers the London and North Western and the Irish North Western and Dundalk and Greenore Companies to make arrangements with any owners of steamboats in order to carry traffic from Holyhead to Greenore if they please. That clause has not yet been acted on, because certain works on the Irish Railways have not been completed, pending the question whether the Government should purchase the Irish lines; but the works have now been commenced, and the communication will be open at the end of this summer. One of the petitioners is one of the very parties with whom the London and North Western may, under clause 4 of the Act of 1864, make bargains and agreements, and if that clause had been acted upon, it was perfectly competent for us to compete with the petitioners. As to traffic between Liverpool and Greenore now carried by the petitioners, if it gets to Liverpool by the railways communicating with that town it will obviously go by the petitioners' steamers, after the passing of this bill, just the same as before. With regard to the Great Western Company, the facilities from Chester to Holyhead were granted, not as any boon to the Great Western, but as a set-off against facilities which they gave the London and North Western to Newport and in various other directions. There is nothing in the bill which revokes those facilities, and therefore if the Court grant the Great Western a *locus standi* at all they will limit them to the question of Greenore, and not allow them to go

into the proposed extension of time, as regards the communication between Holyhead and Dublin. The petitioners have not raised that question.

Saunders: We object to the extension of time under the 8th clause of the bill, the wording of which is very different from the Acts of 1848, 1855, and 1861, under which the London and North Western now work between Holyhead and Dublin. If this clause means that the City of Dublin Steam Packet Company is to be shut up, the Great Western will have a great deal to say to it; and it is doubtful whether the facility clauses of 1863 will equally apply if the Railway Company is to be the sole owner of the steamboat communication.

Merewether: The bill only proposes an extension of the powers of the original Acts. This bill, enabling the London and North Western to have steamers from Holyhead to Greenore, cannot affect traffic carried from Swansea or Staffordshire to Birkenhead, destined for Greenore. If the London and North Western get this bill there will be nothing prohibiting the Great Western from sending any traffic they please by the London and North Western route from Holyhead to Dublin, or from Holyhead to Greenore. There is nothing in the bill withdrawing the advantages given to the Great Western by the Acts of 1863 and 1864.

The CHAIRMAN: In the case of the Great Western Railway Company the *locus standi* is allowed. In the cases of the Irish Steamship Association, the Steamship Owners Association, and the Dundalk Steam Packet Company (Limited), the *locus standi* is allowed against so much of the preamble and clauses of the bill as relates to the providing and working of steam and other vessels between Holyhead and Greenore, and other ports in the Lough of Carlingford.

Agents for the Bill, *Sherwood & Co.*

Agents for the Steamship Associations and for the Dundalk Steam Packet Company, *Bryden and Robinson.*

Agents for the Great Western Railway Company, *Young, Maples, & Co.*

PRESTON STATION BILL.

3rd May, 1870.—(*Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Petitions of (1) RIBBLE NAVIGATION COMPANY; (2) NORTH OF ENGLAND RAILWAY CARRIAGE AND IRON COMPANY (LIMITED).

Railway Station—Allotment and Partition of—Branch Line Approaching—Sidings—Junction—Impediment to Traffic Apprehended—by Owners of Branch Line—and by Traders upon—Six-Mile-Clause.

Two railway companies, joint owners of a station,

promoted a bill to divide it between them, vesting in each company an allotted portion, and also seeking power to enlarge and alter the station. A branch railway, of which a navigation company were part owners, joined one of the promoters' lines, at a point short of the station, though at the point of junction there were sidings connected with the station. The navigation company opposed the bill, urging that the powers sought would extend to the junction, which, they contended, practically formed part of the station; that their traffic would be interfered with, and that the promoting companies would be able to charge a double short distance toll upon traffic entering the station from the branch. The junction and sidings were not scheduled; and the promoters replied that the bill only affected the property of the two companies:

Held, that the petitioners had no *locus standi*.

A separate petition on similar grounds was presented by a firm of traders whose works were situated upon the branch railway:

Held, that they also had no *locus standi*.

The bill was one "for enabling the London and North Western and the Lancashire and Yorkshire railway companies to alter and enlarge their station at Preston, and in connection therewith to acquire lands and execute certain works; and for authorising agreements between the companies in reference to those and other matters, and for other purposes." The preamble recited that the undertaking of the North Union railway company (including the station at Preston) was vested under the authority of Parliament in these two companies, in certain proportions, and was managed by a joint committee of persons appointed by the two companies. Under the bill the promoters were empowered to make a partition of the whole or any part of the station as now existing, or as altered or enlarged under the bill, and to vest the portion so allotted in each company upon such terms and conditions as might be agreed upon between them.

The Ribble Navigation company in their petition alleged that they were incorporated in 1806 to improve the navigation of the Ribble; that they were joint owners of the Ribble branch line, about three-fourths of a mile long, connecting the Preston station with the quays adjoining the Ribble; that a moiety of this line was the property of the North Western and Lancashire and Yorkshire companies, those two companies working and maintaining it, providing all rolling stock, fixing the tolls and charges, and being virtually the owners, except that they accounted half-yearly to the petitioners for their proportion of the receipts; that the tolls levied by the two companies upon the Ribble branch were excessive, the effect being to prevent the development of traffic in the Ribble navigation; that the companies had an interest in obstructing the

development of the traffic on the Ribble navigation, being joint owners of the port of Fleetwood, twenty miles or thereabouts from Preston; as an instance of which they charged no more for the carriage of certain classes of goods from Fleetwood to Manchester than from Preston to Manchester, though the distance was twenty miles greater; that if the bill passed, the two companies might destroy, or injuriously affect or interfere with, the junction of the Ribble branch railway, while the traffic would be exposed to the danger explained in the next petition with regard to short distance tolls.

The North of England Railway Carriage and Iron company (Limited) alleged that they carried on an extensive business at West Stroud, in the borough of Preston, their works being connected by a siding with the Ribble branch railway, and all their traffic to and from the railways of the two companies, amounting to many thousand tons a year, being obliged to pass over this branch and through the Preston station; that the petitioners were the only traders who made use of the Ribble branch for any other purpose than that of export and import by the river Ribble; that they had great reason to complain of the mode in which the two companies worked the Ribble branch, and of the tolls and charges levied by them in respect of it; that, if the bill became law, the petitioners would suffer great injury, inasmuch as the two railway companies might arrange that a part of the Preston station, through which traffic to and from the Ribble branch must of necessity pass, should become the sole property of the North Western, who were entitled to a short distance toll as for six miles; that the petitioners' traffic over the Ribble branch, using that part of the station, and thence over the Lancashire and Yorkshire, would thus be chargeable with a second short distance toll as for six miles; that on the other hand, if the part of the station necessarily used by the Ribble branch traffic were vested in the Lancashire and Yorkshire, the petitioners' traffic passing thence over the North Western would be also chargeable with the short distance toll payable to the Lancashire and Yorkshire company; and that under the bill the petitioners and the public might be deprived of the option they now had, of forwarding goods from the Preston station, or from the petitioners' siding, by either of the two companies, who had competing routes from Preston to Manchester, Liverpool, Leeds, Sheffield, and other places in Lancashire and Yorkshire; and petitioners submitted that as the Ribble branch was now for all practical purposes a part of the system of each of the two companies, the bill, if its preamble were proved, ought to provide that, for all purposes of working, and of tolls and charges, the Ribble branch should be deemed a continuous part of the railway of each of those companies, and that in respect of the station no arrangements, or agreements, as regards working or tolls or otherwise, should be entered into between the two companies to the prejudice of the petitioners or the public.

The *locus standi* of the Ribble Navigation Company was objected to because (1) no railways, works, or lands of the petitioners are

or interfered with; (2) the statement that the bill the promoters might destroy or only affect or interfere with the junction of Ribble branch railway is not correct, the fact that no part of that railway is within the station, as it now is, or may under the bill be altered, or enlarged, or rebuilt, and the promoters have no right to be heard against portions of the bill which relate to the station, enlargement, or rebuilding of the station; (3) no alteration is proposed in any rates, or charges now authorised to be demanded in respect of any traffic of the petitioners, or in which they are interested; (4) the provisions of the bill (for the partitioning of the station), even if they had effect stated in the petition, would not so pre-empt or affect the rights or interests of the petitioners as to entitle them to be heard; (6) there is no such interference with the rights or interests of the petitioners, and the bill contains no allegation upon which, according to practice, they can be heard.

objections to the *locus standi* of the North Lancashire Railway Carriage and Iron company substantially the same.

Q.C. (for Ribble Navigation company): The Ribble branch, of which we are owners with the two companies, ends at a short of the station buildings, but at a place where there are sidings in connection with the station, of which, therefore, it really forms a part.

Merewether, Q.C. (for promoters): The Ribble branch is not within the limits of deviation, nothing is proposed to be done with the branch.

Q.C.: We do not object to the proposed works at the Preston station, but under the bill the companies may deal with "lands, buildings, and approaches belonging to or connected therewith," and that power enables them to make any alterations they think proper in sidings, at the point where the branch terminates. Then, under the powers of the bill, the two companies may allot any part of the station in severalty to each. So the traffic of the Ribble company will have to go to one part allotted to the North Western and to another part allotted to the Lancashire and Yorkshire, the effect of which may be to subject our traffic to a six-mile toll in respect of each of the two lots. Further they may make any arrangements they please with reference to the conduct of our traffic at the station, and all have no power to interfere.

JOHN DUCKWORTH: Cannot the two companies make such arrangements now?

Q.C.: No, they cannot. We allow the two companies to work our line, but if we have any objection to complain of that working, we have a right, because the working agreement is detachable by either party. Under the bill our traffic may be obstructed; we may find it not possible to remain independent, and thus the Ribble may be prejudiced. The exact mode in which our interests will be affected can only be pointed out by a traffic manager or engineer; it is sufficient to show that we are interested in the Preston station, and in the

working of the traffic there. The Ribble branch is not like other railways, having ramifications in various directions; its only termini are the Ribble Navigation and the Preston station, now being dealt with; and the traffic of the Ribble branch has to be manipulated at that station, and nowhere else. The word "station" is not to be restricted to the particular place that happens to be covered; it applies also to sidings to which the traffic is brought; and we are entitled to see that the promoters are not empowered to deal with this station, so as to interfere prejudicially with our traffic.

Sir JOHN DUCKWORTH: Do you contend that under the powers of the bill the two companies can alter the junction of the Ribble line with theirs?

Cripps: Under the powers to enlarge or alter, rebuild, or take down the whole of the existing station, they can.

Merewether: Those powers only apply to the property of the two companies.

Cripps: They can interfere with the sidings adjoining the Ribble branch, by means of which our traffic has been hitherto accommodated.

Sir JOHN DUCKWORTH: Do you contend that the two companies can take up your rails which communicate with their lines?

Cripps: We do not say they can do that. The Ribble company own nothing besides the two lines of rail.

Nesbitt (Parliamentary Agent, for North of England Railway Carriage, &c., company): Though our interests are, to some extent, the same as those of the other petitioners, my clients desire to appear separately, inasmuch as the Navigation company may possibly come to some arrangement with the promoters, whereby our interests may be sacrificed. The Ribble branch is not used in the same way by any traders but ourselves, and we therefore really represent a class of traders. Moreover, we are entirely dependent upon the Ribble branch for access to the railway system of England, and if impediments are put in the way of our traffic, you might as well build a wall in front of our works, in which we have invested £100,000. It will be perfectly competent for one of the two companies to say to the other, "We can work the Ribble traffic better and cheaper than you can. Hand over to us all that traffic, and we will give you a *quid pro quo* elsewhere," the result of which will be that, whereas we can now send our goods by either line of railway to Leeds or Manchester, such impediments may be put in the way of the traffic that we shall be compelled to use one system in preference to the other. The nature and magnitude of our interest dispose of the objection that we are only a single trading-firm, and therefore cannot be heard.

Merewether, Q.C. (for promoters): I shall take no such objection; for I do not see why one trader should not be heard as well as a thousand. This bill has been brought in with a view to improve the Preston station. The arrangements proposed merely concern the Lancashire and Yorkshire and the North-Western companies, and cannot affect any one else. The bill does not propose to interfere with the Ribble branch,

and gives no power to deal with anything except the promoters' own property. The sidings referred to by the Navigation company are not even scheduled, and therefore cannot be altered, and there is nothing in the bill affecting the junction with the Ribble branch. As to the apprehension that two 6-mile tolls may be charged, only one 6-mile clause is applicable to the joint line, and the Navigation company in their petition really admit that. There is not a word in the bill about the allotment of any part of the line to each company, nor a word about rates; and it will require a fresh Act to constitute the property in the lines the property of either before a double toll can be charged. As to the petition of the Carriage company, there is no cause for apprehension that impediments will be put in their way. It is not to be supposed that the Lancashire and Yorkshire will be able to stop the traffic of the North-Western, or *vice versa*. The lines will still be the same joint property. There is nothing in the bill to give anybody the slightest preference in the station. It is at present an inconvenient station, and the promoters are going to remedy that inconvenience for the public benefit rather than their own.

The *locus standi* of both the petitioners was *Disallowed*.

Agents for Bill, *Sherwood & Co.*

Agent for both Petitioners, *T. Newall.*

BELFAST HARBOUR BILL.

9th and 11th May, 1870.—(Before Mr. St. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of (1) the CORPORATION OF BELFAST.

Harbour Board—Corporation—Sale of Surplus Lands—Intending Purchaser—Sewage—Irrigation—Adjoining Landowners—Right of Pre-emption—Single Ratepayer—Representation—General Rule of—Exception—Ratepayers, when heard—Practice—Decision of Court—Modification of, by consent.

Against a bill authorising a harbour board to sell or lease its surplus lands, the municipal corporation petitioned on the ground that they were already in treaty for a portion of the lands for purposes of sewage irrigation, and claimed a primary right to purchase these lands in the public interest, there being no others equally eligible for their purpose, and the harbour board having given them notice to discontinue pollution of the river:

Held, that the corporation could not claim to be placed in any better position than that of other intending purchasers, and therefore had no *locus standi*.

Against the same bill two petitioning landowners, whose property had been taken by the harbour commissioners under the compulsory powers of a former Act, alleged that the bill would deprive them of the right of pre-emption over portions of the surplus lands, though as no time was fixed for completion of the works for which the lands were taken, they admittedly, as matters stood, could not compel the harbour board to sell:

Held that both petitioners were entitled to a *locus standi*.

A ratepayer and owner of property within the borough also petitioned, alleging that by a resolution passed at a public meeting of the ratepayers, he had been authorised and requested "in his own behalf and ours" to lodge a petition against the bill, and to procure the insertion of clauses affecting the constitution of the harbour commissioners. It was replied that questions of rating and constitution formed no part of the bill, which was only for disposal of surplus lands:

Held that the petitioner had no *locus standi*.

According to the general rule, ratepayers cannot be heard against the corporation that represents them. *Seem*, however, that in the case of a bill against which the corporation petitions, ratepayers may allege grievances distinct from those urged by the corporation, and may also be heard on these allegations.

Two days after a decision of the Court disallowing the *locus standi* of a petitioner, and whilst another branch of the same case was still at hearing, the Court, upon application to that effect being made to them, were willing to alter their decision and grant a limited *locus* to the petitioner, where it appeared that such limited *locus* had been offered before argument by the promoters, who now consented to renew the offer.

The Referees require *prima facie* evidence of title; "otherwise anybody can give himself a *locus standi* by merely stating that he is a landowner." An allegation by a petitioner that he has rights as a landowner is not sufficient, if such allegation be controverted.

The bill was one "to authorise the Belfast Harbour Commissioners to sell their surplus lands, and to make leases." The Corporation by their petition objected to the sale of some of the lands in question, wishing to ac-

quire these for purposes of sewage irrigation. They stated that there was a population residing on the county Down side of the town of Belfast, of about 18,000, and their rapidly increasing numbers rendered it imperative that the petitioners, as the sanitary body, should provide for the efficient sewerage of this division of the town; that the sewage must either be discharged into the river Logan, which divides Belfast into two parts, or carried across land reclaimed by the harbour commissioners, under their Act of 1854, or else must be utilised by irrigation of that land: that the town council accordingly had entered into communication with the harbour commissioners, who appointed a committee, with their secretary and engineer, to visit the towns where sewage matter had been utilised; that this committee, in their report, recommended that the harbour board should oppose the adoption of any system which provided for the discharge of sewage directly into the harbour, that the scheme for the disposal of sewage by irrigation should be approved, and a sufficient quantity of land set apart, as applied for by the town council; that this report was adopted by the harbour commissioners, notwithstanding which, the commissioners in their negotiations with the corporation, required that certain preliminary conditions should be assented to, which the petitioners represented to be wholly unreasonable, and involving great and useless expense: that the land, which by the Act of 1854, the commissioners were authorised to reclaim, was intended for public purposes, and not as a land speculation for profit; that the utilisation of sewage being a public purpose, and the experiment which the petitioners were anxious to try upon the reclaimed land one of the highest importance, no power whatever should be conferred which would enable the commissioners by lease or sale, to prevent the petitioners from carrying out the works proposed by them; but on the contrary, that a primary right, in preference to any other person or body, should be given them to acquire, on fair and reasonable terms, all lands reclaimed by the commissioners, and not required for the purposes of their trust, which could advantageously be applied to the utilisation of sewage. The corporation also complained that the harbour commissioners had not fulfilled the promises made in 1854, when they obtained their Act, of setting apart portion of the reclaimed lands as a public park.

The *locus standi* of the petitioners was objected to because (1) it was not sought to take any lands, or to interfere with any property, rights, or interests of theirs; (2) the sole object of the bill was to authorise the harbour commissioners to sell their surplus lands and to make leases; (3) the petitioners had no right or interest whatever in such lands, and no right, primary or otherwise, to acquire such lands in preference to any other person or body, whether for sewage utilisation or any other purpose; (4) there was no provision whereby the promoters would be relieved from any obligation imposed upon them by any former Act as to the purposes for which lands should be used or set apart; (5) the matters alleged in the petition had no reference

to the object of the bill, and were not such as, according to practice, entitled the petitioners to be heard; (6) they had no sufficient interest.

Cripps, Q.C. (for petitioners): The harbour commissioners have very properly objected to sewage being any longer sent into the river; but the piece of land which they are now taking power to sell is the only land that will be available, in the first instance, for irrigation works. What the corporation ask is, that it should be referred to an arbitrator to say upon what terms the land should be handed over.

Mr. RICKARDS: Can you cite any case in which it has been held that a party, standing simply in the position of an intending buyer of land, is entitled to a *locus standi* against a bill giving power to sell that land?

Cripps: I cannot point to any such case; but all cases must be decided by their peculiar circumstances. Here the party claiming the *locus standi* is not an ordinary buyer desiring to acquire the property for his own private ends, but a corporation anxious to obtain the land for public purposes.

Mr. RICKARDS: There may be other persons who also want it for public purposes?

Cripps: If so, they do not appear. The presumption must be that the corporation know best what is for the interest of the public generally. It is not as though the harbour commissioners had said that this was land upon which an irrigation scheme ought not to be carried out. They have admitted that it is right and proper that it should be carried out.

Mr. RICKARDS: There may be two opinions about whether it will be for the benefit of Belfast that this irrigation scheme should be carried out. The Committee could not go into that without entering into the whole merits of the scheme.

Cripps: In the case of the Reading corporation the Committee went into that question. The Committee perhaps may add a clause to the bill referring the matter to an arbitrator. But if the corporation are not heard, they will be regarded as having no interest in the matter; and something may be done which will be very much regretted hereafter by the inhabitants of Belfast.

Grancille Somerset, Q.C. (for promoters), was not called on to reply.

Locus standi Disallowed.

At the next sitting of the Court (11th May), *Coates* (Parliamentary agent, for petitioners) applied to the Referees to alter their report, and to say "*locus standi* disallowed, except upon clauses with respect to Victoria Park," the petition consisting of two parts, one of which had not been argued.

[It appeared that letters, dated respectively the 4th and 5th May, had been written by the promoters, expressing their willingness to allow the petitioners to be heard as to the "park transfer," but not against the preamble. The petitioners now treated this as a direct concession of a limited *locus*: the promoters replying that it was a conditional offer, which had not been accepted.]

Somerset (for promoters): We are ready to repeat the offer.

The COURT: Are the petitioners willing to take a *locus standi* limited to the park transfer?

Coates: A *locus* so limited we respectfully decline.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dyson & Co.*

Petition of (2) THOMAS MCCLURE, M.P.

" " (3) LORD TEMPLEMORE.

Both these petitioners were landowners, from whom property had been taken by the harbour commissioners under the compulsory powers of the Belfast Dock Act, 1854. They contended, in each case, that the effect of the bill would be to deprive them of the right of pre-emption which they now enjoyed, in the event of a sale of surplus lands. Mr. McClure further laid stress upon the injury to the value of his property, arising from the non-allotment of land for a public park by the harbour commissioners, as contemplated in 1854, when the Act was passed.

The *locus standi* of the petitioner, in each case, was objected to because (1) no lands, property rights or interests of his were taken or interfered with; (2) the only object of the bill was to authorise the harbour commissioners to sell their surplus lands and to make leases; (3) the lands in respect of which the petitioner claimed a right of pre-emption, under clauses 127 and 128 of the Lands Clauses Consolidation Act, 1845, were not subject to the provisions contained in those clauses, or to any right of pre-emption whatever, and the petitioner had no right or interest in those lands, either actual or conditional, present or prospective; (4) if the petitioner had any such rights, there was nothing in the bill to deprive him of them; (5) there was no provision altering or repealing any Act which required the promoters to set apart land for the purpose of a public park; (6) the other matters complained of were not such as, according to practice, entitle to a hearing; (7) the petitioner had no sufficient interest.

O'Hara (for Mr. McClure): The Act of 1854 constitutes a Parliamentary contract between the promoters and the owners of the lands taken; and upon these lands there has been impressed by Parliament a trust that they shall be held for public purposes, and for public purposes only. Lord Eldon, in the case of *Blake-more v. Glamorganshire Canal Navigation* (1 My. and K. 162), said that Acts of Parliament authorising public works "are to be regarded in the light of contracts made by the legislature on behalf of every person interested in everything to be done under them;" and unless that principle were applied in construing such Acts, "they will become instruments of greater oppression than anything in the whole system of administration under our constitution." The promoters seek to alter this contract by allowing the land taken by them to be used for other than harbour purposes. The Act of 1854 unfortunately specified no time for the completion

of the works which it authorised. Accordingly, though the Lands Clauses Consolidation Act was incorporated with the Act of 1854, the pre-emption clauses in the general Act become of no avail.

Mr. RICKARDS: If the pre-emption clauses are unavailing, how do you establish that there is, by this bill, any variation of a contract with the adjoining land owner?

O'Hara: The contract with the adjoining land owner is contained in that part of the Act which says that the land shall be applied to harbour purposes only; and if any attempt is made to alienate the land to other purposes, that will be a variation of the contract. The promoters feel the obligation they are under, and that is the reason they now come to be relieved from the *onus* and operation of that contract.

Mr. RICKARDS: Has the original vendor of the land, who sold it under compulsion without any right of pre-emption, a stronger ground than any other of the Queen's subjects, for insisting on the application of this land to public purposes?

O'Hara: A man having some building land adjoining the proposed site for a park, may consider that the value of his land will be increased by this proximity, and may, accordingly, raise no objection to the bill; but if the public body, instead of devoting the land to the purposes of a park, devote it to something which amounts to a nuisance, the statutory contract made with the land-owner will be varied. I can refer to no case exactly in point, but on the *ratio decidendi* which has governed the Court in other cases, I am entitled to a *locus standi*. The most analogous cases are abandonments of railways. It is true that in the *London, Brighton, &c. Bill, 1868* (Cliff. and Steph. 18) the *locus standi* of Mr. Streatfeild was disallowed, but this was because he had his right of pre-emption, and so could protect himself; and, secondly, there was no covenant and no statutory obligation to complete the railway. I also claim a *locus standi* on the ground that Mr. McClure possesses, what, in England, would be equivalent to manorial rights, over the whole of the ground on the south side of the channel.

Granville Somerset, Q.C. (for promoters): Can you prove that Mr. McClure possesses those lands?

O'Hara: According to the practice of the Court, I am not bound to produce his title.

Mr. RICKARDS: The Referees require *prima facie* evidence of title, otherwise anybody can give himself a *locus standi* by merely stating that he is a land-owner. It is not sufficient for a man to allege that he has rights as a land-owner, if the statement be controverted by the other side.

O'Hara: I do not propose to offer evidence on the point. But the petitioner does assert that, as owner of the adjoining estate, on which valuable villas and houses have been erected, the powers sought by the bill will be injurious to his property and the interests of his tenants.

Bilder (for Lord Templemore): This case is very nearly identical with that of Mr. McClure. There being no time fixed in the Act of 1854 for the completion of the works, the peti-

tioner cannot claim at any exact period that the lands remaining unsold shall vest in him; but the 128th section of the Lands Clauses Act expressly provides that whenever the promoters do sell the superfluous land, they must offer it to the owner from whom such land was originally taken. Therefore, as the harbour commissioners have no power to lease the lands, they must either sell them as superfluous lands, or must leave them idle; and they can, in fact, only utilise the superfluous lands by selling them, and offering the petitioner the pre-emption. This bill takes power to sell the lands, either by sale or private contract, and also to lease them for 21 years: it therefore virtually repeals the 128th section of the Lands Clauses Act, incorporated in the Act of 1854.

Mr. RICKARDS: The argument of the promoters, no doubt, will be that, no time being limited in the Act of 1854, they may hold the adjoining landowner at arm's length for ever; and then his pre-emption is of no use to him.

Bidder: The answer is, that though there is no statutory limitation of time, yet inasmuch as the commissioners cannot use the surplus lands for their own purposes, and cannot do anything with them but sell them, they will sooner or later sell in order to utilise them. Another objection to the bill is the power taken to lease lands for 21 years, that being a distinct power of dealing with surplus lands never contemplated in the original Act. In that Act a clause was inserted specially saving Lord Templemore's rights, except so far as they were interfered with by the Act, care being taken that his rights over the property should only be invaded to the extent necessary for the purposes of the Act.

Somerset (in reply): The Commissioners have done what the Act directed with reference to the park: and they take no power by this bill to sell any portion of it.

The COURT: You need not go into that point.

Somerset: There can be little doubt that when the price to be given for the land was submitted to arbitration, the fact that there would be no right of pre-emption was considered in making the award. The bill does not alter the rights of the petitioners; but what they want is a right of pre-emption, which they have been paid to give up.

Mr. RICKARDS: Do you admit that the commissioners have the power to sell surplus land under the Act of 1854?

Somerset: There may be an existing power to sell, but the promoters think it more convenient that this power should be taken expressly.

Mr. RICKARDS: It is admitted that the commissioners are not under compulsion to sell, because there is no time fixed for the completion of the works; but if the Act of 1854 gives them power to sell, the question is whether that is not subject to the right of pre-emption?

Somerset: The promoters assume, for the purposes of this bill, that they have no such right, and that if they lose this bill they cannot sell. Accordingly, they do not take away from the petitioners a right of pre-emption which they never had. There is no injustice here, to induce the Referees to strain a point and admit the

petitioners, who have obtained the price of their land and of all the incidents attaching to it.

The COURT (after deliberation) Allowed the *locus standi* of both the petitioners.

Agent for Mr. McClure, M.P., Baines.

Agents for Lord Templemore, Martin & Leslie.

Petition of (4) JOHN REA.

This petition was headed "The humble petition of John Rea, of No. 80, Donegal Street, in the borough of Belfast, in the county of Antrim, in Ireland, solicitor, a ratepayer and owner of property within the said borough, on behalf of himself and other ratepayers and inhabitants of the said borough, assembled at a public meeting held at the said borough pursuant to advertisement, on Wednesday, the 16th day of Feb., 1870." It set forth that the petitioner was a ratepayer and owner of property in Belfast, and as such was interested in the property, monies, and lands referred to in the bill, by which his interests were injuriously affected; that the preamble was untrue and incapable of proof, and that it would be dangerous to the public interests to grant such enormous and unusual powers as were sought by the bill to a board elected on a franchise so restricted; that the promoters had not called any town meeting, or in any other way given the ratepayers an opportunity of signifying on what conditions they would agree to such extraordinary powers; and the petition went on to suggest various clauses as to qualification, voting, and other matters which ought to be inserted in the bill "to prevent abuse and jobbing."

The *locus standi* of the petitioner was objected to because (1) no lands, property, rights or interests of his were taken or interfered with; (2) the bill merely authorised the promoters to sell their surplus lands and make leases; (3) no ground was shown upon which, according to practice, the petitioner, either on behalf of himself or other ratepayers and inhabitants of the borough, was entitled to be heard; (4) no power was sought to levy rates or to alter existing rates; (5) the other matters alleged or complained of were not such as entitled the petitioner to be heard; (6) he had no sufficient interest in the bill.

Rea (solicitor, who appeared in person): By the decision of the Court, excluding the corporation, if I am not allowed to go before the Committee and ask for clauses to protect the public interests, the opposition will be left in the hands of Mr. McClure and Lord Templemore, who avowedly appear for private purposes. I, and those whom I represent, object to the constitution of the harbour board. It may be said that the harbour is outside the town and not part of the municipality; but the harbour commissioners may render these lands unavailable for building, and may therefore increase the burden on the ratepayers, by diminishing the number of houses that would otherwise be rateable. Moreover, if the commissioners do anything to discourage ships from coming to the port, the property of Belfast will be amerced to pay interest to

the bond-holders. Though the ratepayers of Belfast pay no rates directly to the harbour commissioners, they do so indirectly in the rates levied on all goods imported. I have been allowed a *locus standi* before several Committees of the House of Commons. I refer also to the *Antrim and Belfast Borough Railway Bill*, 1865 (Smeth. 91); and the *County Down and Belfast Borough Bill*, 1868 (Cliff. & Steph. 158). In the latter case, apparently, my *locus standi* was refused because, a public meeting having appointed a number of gentlemen, of whom I was one, to be a committee, giving them general powers to petition against the bill, I did not call any meeting of that committee to authorise the petition which I deposited. A link in the chain of authority was therefore wanting. If I had called a subsequent meeting of the committee and got their authority to petition, or had read the petition to them, and obtained their approval to it by resolution, doubtless the petition, though only signed by me, would have been held to be a petition upon which I could have appeared. I have taken care to cure that defect in the present case; for on finding that no action was taken by any public body in Belfast, or by any section of the ratepayers to convene a meeting in opposition to the bill, an advertisement was inserted by me in the Belfast papers convening a public meeting for the same evening, "to make arrangements for securing clauses in the pending bill for a new election of harbour commissioners, the right of Parliamentary electors to vote, and other privileges for the ratepayers, who, with the exception of those occupying premises of the value of £40 and upwards per annum, have hitherto been excluded from any share in the management of this important trust." At that meeting, held on the 16th of February, a Harbour Board Reform Committee was appointed to take certain steps; and it was resolved that "Mr. John Rea be authorised and requested, on his own behalf and ours, to lodge a petition against the bill, to prevent its being passed into a law, or if that cannot be accomplished, to secure the insertion of" clauses, as to certain matters specified in the resolution, "and generally to have such other clauses added as may appear to him requisite for the protection of the ratepayers." There being no counter petition and no counter meeting, I ask the Court to assume that I come before the House of Commons with the full assent of the 150,000 inhabitants of Belfast, to oppose this bill. Supposing even, for the sake of argument, that I have no right to be heard as an individual ratepayer, I have a right to be heard as representing the ratepayers. For though the petition was not drawn up at the time and read to the meeting, the resolution gives me authority to petition in their name under S. O. 131. It is in the discretion of the Referees to admit inhabitants of a town alleging themselves to be injuriously affected. I am an inhabitant and represent inhabitants; and my petition alleges that the bill will injuriously affect the inhabitants, and ought to be rejected. It is not necessary that the petition should be the petition of two or more inhabitants; one is sufficient to give effect to the S. O.; in the same way that the

word "men" in Acts of Parliament means "man."

Granville Somerset, Q.C. (for promoters): The petitioner only says that he is a ratepayer and owner of property in the borough, not that he pays rates to the harbour trust. Even assuming that all who attended the meeting pay rates to the harbour trust, which is not alleged, there is no provision in the bill to affect the rates. The petition is signed "John Rea" merely, without saying on behalf of anybody.

Rea: I recite my authority in the beginning of the petition.

Somerset: It is necessary to state after the signature on whose behalf it is signed, if signed on behalf of anybody. It is not suggested that the bill, which is one for dealing with surplus lands, affects the petitioner in any way; but he seeks to go before the committee to propose clauses which the committee would have no power of inserting, inasmuch as fresh notices would be required. No petitioner has ever been allowed a *locus standi* for the purpose of inserting provisions of a totally different class from those which the bill contains. Moreover, those who attended the meeting, if they are inhabitants of the borough, are represented by the corporation.

Mr. RICKARDS: The general rule is that ratepayers cannot be heard against the corporation that represents them. But it does not follow that if a corporation petitions against a bill the ratepayers may not also petition, provided they show a grievance. The corporation, in this case, petitioned in respect of a certain piece of land which they wished to have for their own irrigation scheme; but supposing these ratepayers had been able to allege in this petition that they, as ratepayers of the borough, would suffer any inconvenience or any grievance from the bill—which would be quite a distinct ground from the objection taken by the corporation—it might very well be that they would be entitled to be heard upon that allegation.

Somerset: They must have a grievance different from that of the corporation; they must have a grievance as private individuals. But Mr. Rea does not allege a separate grievance.

Mr. RICKARDS: The corporation not having alleged that their town will be injuriously affected, it may be open to ratepayers, if they have any grievance, to allege it in a separate petition.

Somerset: The petitioner does not allege that what is proposed to be done under the bill will injuriously affect the town of Belfast.

Rea: I do; for what affects me affects every ratepayer. In point of law they were all present at the meeting, and I represent them.

Somerset: Even assuming that the people who attended this meeting were harbour ratepayers, they cannot be heard against their common seal, which is held by the promoters. And a single ratepayer is not entitled to be heard; *County Down and Belfast Borough Bill*, 1868, (Cliff. & Steph. 159); *Petition of Messrs. Baird* 1865 (Smeth 126); *Belgravia and South Kensington Road Bill* 1869 (Cliff. & Steph. 124). Here the parties are not to be rated, and the chairman of the meeting did not sign; the peti-

tion does not say that the parties will be injuriously affected; it does not use the word your "petitioners," but your "petitioner;" and the petition itself was never seen by the meeting.

Rea: The petition is to be taken in connection with the statement at the commencement of it. Though I did not put the petition formally to the meeting, all the points which it contains were put to the meeting.

The *locus standi* of the petitioner was *Disallowed*.

DUBLIN, WICKLOW, AND WEXFORD RAILWAY BILL.

9th May, 1870.—(*Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Petition of RALPH HASLAM.

Railway—Capital—Wharnccliffe Meeting—Dissenting Shareholder—S. O. 71, 78, 129—Distinct Interest—Pending Suit by Shareholder against Company.

Practice—Petition—Change of Circumstances after Lodging—Necessity for Fresh Petition—Notice of Objections—Sufficiency of—Striking out of Immaterial Objections.

A railway company promoted a bill for the creation and issue of new shares in place of certain shares alleged to have been duly surrendered and cancelled. The bill had been approved by the usual Wharnccliffe meeting of shareholders after the first reading, but subsequently the S. O. Committee of the House of Commons directed that certain amendments should be introduced, and that the bill should be submitted to a second meeting of the company, "to be called in the same manner as prescribed by S. O. 71." The bill was opposed by a shareholder, who alleged that it would indemnify the directors for irregularities, in respect of which he had instituted against them a suit, then pending. He alleged that he had by his proxy attended the first meeting, and dissented: but as to this point, there was a conflict of testimony. At the second meeting, held after the deposit of his petition, and of the objections to his *locus standi*, he was admittedly present and dissented. It was contended by the promoters that he ought to have lodged a fresh petition, alleging that he had attended the

second meeting as a dissenting shareholder; and that, for want of such an allegation, his petition must fail:

Held, that as it was not raised by the objections, this ground of opposition could not be maintained: and further that, as the petitioner's dissent at the second Wharnccliffe meeting was admitted, it became unnecessary to inquire whether he did or did not dissent at the first meeting, the Referees being of opinion that the second meeting revived the petitioner's power to dissent, and that he was, therefore, entitled to a *locus standi*.

The bill was one to confer additional powers on the Dublin, Wicklow, and Wexford Railway Company for the construction of works and otherwise. The preamble recited that 8,500 shares of £10 each, amounting to £85,000, had been surrendered to and cancelled by the company, in terms of a resolution of an extraordinary general meeting of the company, held at Dublin, on the 17th day of August, 1868; and it was expedient that the company, for the purposes of their undertaking, be authorised to create and issue new shares in lieu of such shares cancelled by them, and without a preference dividend. Clause 15 provided that "for constructing the works by this Act authorised, and for the general purposes of their undertaking, the company may, in lieu of shares cancelled by them to the amount of £85,000, create and issue a similar amount, by means of new shares of £50 each in their undertaking, and without preference dividend; and subject to the provisions of this Act, the directors may from time to time fix the amounts and times of payment of the calls on those shares." The petitioner was a shareholder in the company, holding £71,600 ordinary stock, and also a preference shareholder, holding £1,000 worth of stock. In his petition, after setting forth the circumstances which had led to the surrender and cancellation of the 8,500 shares, he alleged that in February, 1869, he filed a bill in the Court of Chancery in Ireland, against the directors and others, praying amongst other things, that the surrender and cancellation of these shares might be declared illegal and void, and that the shares might be treated as still existing, and the unpaid calls thereon enforced; that if the bill were passed into law, it would have the effect of legalising the alleged irregularities of the directors, and of rendering his suit abortive, in so far as it related to these matters; that it was unjust that Parliament should give an act of indemnity, as was sought by the bill, for reprehensible irregularities whilst litigation was pending; and that in prosecuting such suit, the petitioner had incurred great expense, which, as he was advised, would fall on the persons guilty of these irregularities, whereas, if this bill passed, it would fall on him.

The *locus standi* of the petitioner was objected to because (1) the petitioner is a shareholder in

the company promoting the present bill, and at the meeting of the proprietors to consider the bill, called in terms of S. O. 71, after the first reading, and held on the 21st February, 1870, the petitioner was represented by his proxies, when the bill was approved, without dissent by the petitioner, subject to certain amendments; (2) from the resolutions and amendments passed at the meeting, the petitioner by his proxies did not dissent, nor was there any division at the meeting; (3) the petitioner petitions only for himself as an individual shareholder, and not as the representative of any class of ordinary or preference shareholders, nor does he allege that he has any interest affected by the bill as distinct from the general interest of the company; (4) the petition discloses no fact, which, according to practice, would entitle the petitioner to be heard otherwise than as a shareholder.

Littler (for petitioner): If the bill passes, it will render the petitioner's suit nugatory, and put an end to his proceedings, not only as far as the company is concerned, but probably against individual directors. The *Caladonian Railway Bill, 1869*; *Petition of J. Baird and others* (Cliff. & Steph. 163), is a case in point. The petitioner here claims the right, as Messrs. Baird did in that case, to ask for a clause saving his rights under existing legislation. The first objection to his *locus standi* is, that at a meeting of the company to consider the bill, called in pursuance of S. O. 71, and held February 21, the petitioner was represented by his proxies, and did not dissent. That statement is inaccurate; but the meeting in February goes for nothing, because subsequently, the objections to our *locus standi* being dated March 3rd, the S. O. Committee passed a resolution, also dated March 3, "that in the case of the Dublin, Wicklow and Wexford Railway Bill, S. O. 71 ought to be dispensed with. That the parties be permitted to proceed with their bill, provided that" certain alterations were made in it; "that the bill as amended be submitted to a fresh meeting of proprietors of the Company, to be called in the same manner as prescribed by S. O. 71, and approved of by proprietors present in person or by proxy, holding at least three-fourths of the paid-up capital of the Company represented at such meeting. That the committee on the bill do report how far such orders have been complied with on the report of the bill." Therefore the meeting of the 21st of February was wiped out, and it does not matter whether the petitioner was represented at that meeting or not, and whether the bill there submitted had his assent or not. In pursuance of the resolution of the S. O. Committee, another meeting of the company was held in Dublin, March 31; and that is the meeting upon which the promoters must now stand. The result of the meeting was that the promoters carried the motion for proceeding with the bill. The petitioner was present by his proxy at that meeting, and his proxy was counted against the bill, so that under S. O. 78, he is now entitled to be heard. The second meeting was substituted for one called under S. O. 71, and that being so, the petitioner may exercise the same rights and privileges as if it had been called under S. O. 71. The

objections point to the course taken by the petitioner at the first meeting on February 21, and the promoters did not seek to lodge any additional objections in respect of the course the petitioner took at the second meeting. They, therefore, stand on their old objections, having by their own act in going before the S. O. Committee, declared the meeting of February 21 to be a nullity. Even supposing the Court are of opinion that the petitioner is within S. O. 129, as a shareholder who must shew a distinct interest from that of the company generally, he is clearly within S. O. 78, having appeared at the meeting and dissented by his proxy. I am prepared to show that the petitioner did dissent at the meeting held on the 31st March.

Cripps, Q.C. (for promoters): We admit that he attended at a meeting, whatever may have been its character, held in pursuance of the resolution of the S. O. Committee, and that at that second meeting he dissented; but we do not admit that it was a meeting held under S. O. 71.

Littler: The first meeting was made null and void by the promoters' own act, they having substituted the second meeting for it. But I am prepared, if the Court requires me, to satisfy them by evidence, that the petitioner dissented at the previous meeting, though it appears useless to call evidence with respect to a meeting which had no effect whatever.

Cripps: The objections distinctly deny the fact that the petitioner dissented at the first meeting, and if the petitioner proposes to prove such dissent, he should do so now.

Littler: The promoters having admitted that the proceedings at the first meeting are void, the objections in reference to the petitioner's dissent at that meeting ought to be struck out as immaterial.

MR. RICKARDS: It is not usual for the Referees to strike out objections; and it is for the petitioner's counsel to take what course he pleases, with regard to the proof of Mr. Haalam's dissent at the first meeting.

(Mr. Thomas Pooley (the petitioner's proxy) and Messrs. John Murray and Thomas Graydon, all shareholders of the company, and present at the meeting in February, were examined by *Littler*, to prove the petitioner's dissent at that meeting.)

Mr. George Keogh, solicitor of the company, was examined by *Cripps*, and denied that such dissent had been signified.]

Cripps (in reply): The petitioner has no right to be heard either under S. O. 129 or S. O. 78. To bring himself under S. O. 78, he must allege in his petition that he was present at the meeting and dissented.

Littler: That objection is not taken in the notice of objections. The promoters do not say that the petitioner has not alleged that he dissented, but only that he did not dissent.

Cripps: I am entitled to take the objection as a matter patent upon the face of the petition. Even if the petitioner dissented at the Wharcliffe meeting, he cannot be heard unless in his petition he asserts that he was a dissenting shareholder there.

Littler: That objection has not been taken. Objection 4 is an objection to Mr. Haalam's

being heard otherwise than as a shareholder, which does not apply to this point.

Cripps: The petition must not only allege the objections to the bill, and show an interest distinct from that of other shareholders, but must also show that the petitioner was a dissenting shareholder at the Wharnccliffe meeting. Since the S. O. passed, there has never been a case of a shareholder attempting to be heard upon a petition, unless he so brought himself within the S. O. This petition shows nothing which, according to practice, entitles the petitioner to be heard otherwise than as a shareholder. It does not allege that he is within S. O. 78, or that he attended the Wharnccliffe meeting.

The Referees deliberated.

Mr. RICKARDS: Without deciding on the merits of the technical objection taken by the promoters to the validity of the petition—that it does not state that the petitioner is a shareholder who duly dissented—the Referees think the notice of objections does not raise that point. The third objection only refers to S. O. 129, and the fourth to the *locus standi* which a petitioner might be supposed to have “otherwise than as a shareholder;” but it is in his capacity as a shareholder, and a dissenting shareholder, that this objection arises. We think, therefore, that neither the third nor the fourth, nor any other objection, raises the technical point which the promoters have now started.

Cripps: The facts as to the second meeting are these:—After the first meeting, the parties went before the S. O. Committee, who said that the bill to be approved by the Wharnccliffe meeting must be the bill of which notice had been given; but that, two amendments having been made in it, the present bill was not that of which notice had been given, and the promoters must go before another Wharnccliffe meeting to get those amendments approved. To what was done at the second meeting, Mr. Haalam had no objection that he did not entertain at the first meeting; on the contrary, he would have been more favourable to what was done at the second meeting, than to what was done at the first.

Mr. RICKARDS: Whether the alterations in the bill made it more acceptable to him or not, the fact is admitted that he did dissent at the second meeting.

Cripps: His dissent at the second meeting cannot alter the case as it now stands. The petition was presented, and the objections were drawn, long before the second meeting. After that meeting, he would have had no difficulty in getting leave to present a new petition, bringing before the notice of the Referees the facts which subsequently occurred. The second meeting and the second dissent are entirely irrespective of what the Referees now have before them, and the Court cannot take cognizance of anything that occurred after the time when all the pleadings were complete. The petitioner has no right to pray in aid of his petition, as against the objections, something that occurred after both the petition and objections were lodged. Moreover, his dissent at the second Wharnccliffe meeting is a mere colourable, not a substantial, dissent from the bill, in the sense intended by the S. O.

After the first meeting, he was apprised by the notice of objections that the promoters intended to oppose his *locus standi*, on the ground that he had not dissented in a way to entitle him to be heard; and, fortunately for him, the second Wharnccliffe meeting gave him the opportunity of recording a colourable dissent.

Mr. RICKARDS: We understand you to admit that the petitioner dissented substantially at the second meeting, and not merely colourably?

Cripps: I admit that he appeared at the meeting by his proxy and dissented; but that dissent was not, under the circumstances, such as entitles him to be heard, according to the practice of Parliament.

Mr. RICKARDS: The second meeting gave him another chance; for, under the resolution of the S. O. Committee, it was to be a meeting involving this consequence, that a dissenting shareholder should be entitled to be heard, in the same way as at the first Wharnccliffe meeting.

Cripps: The first meeting was not, as the petitioner contends, a nullity, owing to the resolution of the S. O. Committee. That meeting stands good for whatever it is worth; the second meeting was only necessary, with a view to the consideration of the amendments, which are wholly immaterial to the interests of the petitioner. His right to appear depends upon the second meeting, for he has no right to appear in respect of the first meeting; and that being so, he ought to have brought his claim before the House by a new petition, setting forth what took place at the second meeting. The promoters would then have had an opportunity of objecting to that petition; but there is nothing now properly before the Court with regard to the second meeting. The case might have been different had he dissented from those amendments in the bill which rendered the second Wharnccliffe meeting necessary.

Mr. RICKARDS: The petitioner has a right to take advantage of the S. O., which says any shareholder who chooses to go to a meeting and dissent shall be entitled to a *locus standi*. We are not to go into the question what parts of the bill he liked and what parts of the bill he did not like.

Cripps: I now propose to show that the petitioner did not dissent at the first meeting.

The CHAIRMAN: We will not trouble you to go into the question of the first Wharnccliffe meeting, the Referees being of opinion that Mr. Haalam did dissent at the second meeting, and is in consequence entitled to a *locus standi*.

Locus standi Allowed.

Agents for Bill, *Holmes, Anton, Greig, and White.*

Agents for Petitioners, *Field & Co.*

BIRMINGHAM CANAL NAVIGATION BILL.

16th May, 1870.—(*Before Mr. WYNN, M.P.,
(Chairman; Mr. ST. AUBYN, M.P.; and Mr.
RICKARDS).*)

Petition of the CORPORATION OF BIRMINGHAM.

*Canal Company—Construction of New Works—
Existing Tolls—Revision of—Corporation—
Claiming to represent Inhabitants and Traders.*

A Navigation Company whose canals served, amongst other places, the borough of Birmingham, proposed to construct a small addition to their canal system, and a short tramway for more convenient transit to the canal. They did not seek authority to levy additional mileage tolls in respect of the new canal, and all the proposed works were situated some miles beyond the limits of the borough. The Corporation of Birmingham, however, claiming to represent the trade and inhabitants of the borough, opposed the bill, urging that, under its provisions, whatever were the intentions of the promoters, the existing tolls would apply to the canal extension, and that these tolls, already excessive and detrimental to the trade of Birmingham, should now be revised. The petitioners also relied on their admission in two cited cases as representatives of the general trading interests of the borough. It was objected that the new works proposed were situated far beyond the jurisdiction of the petitioners; that the existing tariff of rates was untouched by the bill; and that the parties entitled to appear, if any, were the traders and freighters who used the canal:

Held, that under these circumstances, the two cited cases did not apply; and the *locus standi* of the Corporation was disallowed.

This was a bill "to confer further powers on the company of proprietors of the Birmingham Canal Navigation, and for other purposes." Clause 5 empowered the company to construct (1) a canal, with all necessary works, approaches, and conveniences, commencing by a junction with their Spon Lane Branch Canal; and (2) a tramway, commencing by a junction with the Cannock Extension Canal, and terminating at Norton Springs, on Cannock Chase. Under clause 10 the works authorised by the Act were "for all purposes to form part of the undertaking of the company." Clauses 17 and 23 empowered the company to raise £50,000 additional share capital, and a further sum of £15,000 by way of mortgage; and it was proposed by clause 29 to form a sinking fund for the repayment of moneys borrowed under the powers of

the company's Acts of 1854 and 1861, and of the present bill.

The petitioners alleged that they represented not only the ratepayers, but the whole body of manufacturers, merchants, traders, and inhabitants of Birmingham; that the inhabitants of the borough were supplied by boats with coal from Cannock Chase and other districts of South Staffordshire traversed by the company's canals, and the bill if passed into law would injuriously affect these various classes, by adding to the already exorbitant charges of the canal company the tolls to be levied on the new works proposed to be authorised; that the canals of the company extended for about four and a half miles through the borough of Birmingham, most of the important manufacturing and other works within the borough being placed upon their banks, and being entirely dependent upon these canals for the carriage of their coals and materials; that by an Act of 1846 the canal company had been practically amalgamated with the London and North Western railway company, which had complete control over its affairs, the object of the railway company being to divert canal traffic as far as possible on to their railway, and to do away with competition; that the canals of the company extended from Birmingham to Cannock in Staffordshire, a distance of about 18 miles, traversing the coal and iron district of Staffordshire, known as the Black Country; that under sec. 37 of the company's Act of 1846, the proprietors or occupiers of furnaces, forges, and mills throughout the whole of the company's district from Cannock to a place called Winslow Green, at or near the boundary of the borough of Birmingham, had their coal and ironstone carried along the canal at the gross rate of 3*d.* per ton for coal, and 6*d.* per ton for ironstone, whether the distance were long or short, this rate being called "the district rate"; but that for every ton of coal passing Winslow Green and entering the borough, the company charged the full rate, so that a boat carrying 26 tons from the collieries at Cannock Chase and stopping outside Winslow Green would pay to the company a freight of 6*s.* 6*d.*, being at the rate of 3*d.* per ton, whereas if it passed that point it would pay £1 : 17 : 11, at the rate of 1*s.* 5*d.* per ton, being an additional charge of £1 : 11 : 5 for the distance even of a few yards within the borough; though with regard to coal which, instead of stopping in Birmingham, passed through on to the Worcester canal, the company only charged a gross rate of 1*s.* per ton from whatever distance it might come, and so as to the carriage of ironstone; that the effect of the excessive tolls thus charged, exclusive of the cost of haulage, was to discourage manufacturers from setting up large works within the borough and induce those already there to restrict their trade, and refrain from extending their works; that this had already occurred in several instances; that the district rate was a source of loss and not of profit to the canal company, and the whole of their profits were in fact derived from the excessive rates charged in Birmingham; that the provisions of the bill would tend to render permanent the excessive rates of the canal company, whilst all moneys paid by way of divi-

dend or interest on the proposed additional capital, or set apart as a sinking fund, would come wholly out of the pockets of the ratepayers, manufacturers, traders, and inhabitants of Birmingham; that the new canal was for all purposes to form part of the undertaking of the company, who would be able to charge for its use the excessive tolls before mentioned; that the proposed canal was not required, and ought not to be authorised; that under clause 10 the provisions of the Canal company's Act of 1854 were extended to the tramway now proposed, the effect of which would be that a toll in gross of 2*d.* per ton in addition to the excessive toll of 1*s.* 5½*d.*, would be charged on all coal passing over any part of the tramway, and thence on to the company's canals and into Birmingham, and the petitioners objected to the construction of such tramway, and to the toll; that it was of the greatest consequence to the prosperity and general interest of the manufactures and trades of Birmingham that the water carriage by the company's canals should be maintained, and the traffic thereon encouraged; but the systematic policy of the railway company, who had the real management of the canal company since 1846, had been to discourage the water carriage in every way in favour of their railways, and this had been effected by insisting on the maximum tolls and by other means; that the bill would injuriously affect the ratepayers, manufacturers, traders, and inhabitants, would imperil the trade and prosperity of Birmingham, and might seriously diminish the income of the petitioners arising from rates levied under the provisions of the Birmingham Improvement Acts, 1851 and 1861, thereby impairing the security of persons who had advanced money on this statutory security; and that, if the bill passed, clauses should be inserted limiting, to a reasonable amount, the charges made by the Canal Company in Birmingham, and also protecting the interests generally of the petitioners and of the ratepayers, manufacturers, traders, and inhabitants.

The *locus standi* of the petitioners was objected to because (1) no land or property of the petitioners, or of those they profess to represent, will or can be taken or injuriously affected under the bill; (2) the new works proposed to be constructed consist of a short canal less than half a mile in length, and of a tramway, both being many miles outside the limits of the borough and beyond the jurisdiction of the petitioners; (3) the petitioners are not injuriously affected by the objects of the bill; (4) no rights, property or interests of the petitioners will be interfered with; (5) they do not represent any persons or class who might claim to be injuriously affected, or who might allege that their rights, property, and interests were interfered with; (6) no question is raised by the bill which entitles the petitioners to be heard; (7) they are not entitled to be heard according to precedent and practice.

Sargood, Serj. (for petitioners): The points practically raised by the objections resolve themselves into two: whether in the bill there is anything injurious to the inhabitants of Birmingham; and whether the Corporation are the right persons to represent those grievances. An

amendment was made in clause 10 after the petition had been lodged in the House of Lords, but before the bill went into Committee, with the view of meeting the objection of the petitioners, by the addition of words providing that the works to be constructed shall for all purposes form part of the undertaking of the Company, and the "provisions of the Act of 1855 with reference to branch canals [except the provisions thereof with reference to the tolls in respect of branch canals] shall, so far as applicable and not inconsistent with this Act, apply to the canal by this Act authorised to be constructed." The House of Lords disallowed the *locus standi* of the petitioners, partly on the ground that the objection they raised had been got over by that amendment; but the petitioners contend that it has not. Clause 10, though it professes to except the new canal from the operation of the provisions with respect to tolls in the Act of 1855, really does not do so, for the work in question is a "canal" and not a "branch." The exception introduced into the clause is inapplicable, because the right to levy toll on a branch is given under an Act which distinguishes a branch from a canal, there being a different amount of toll on each and leviable under different circumstances. Suppose the work now to be constructed were described as a branch, then clause 10 would be applicable; but if it is a canal and not a branch, the tolls relating to branches can have no operation whatever.

Mr. RICKARDS: Are there any tolls that will be applicable to this canal if made, seeing that it is excepted from the operation of the tolls under the Act of 1855?

Cripps, Q. C. (for promoters): There are none.

Sargood: The words of clause 10 carry with them the tolls. This new work will form part of the undertaking of the company, and will be subject to all the provisions, and entitled to all the privileges which the company obtained under the original Act. It is not to be supposed that the company will give it to the public for nothing. They have therefore, under clause 10, the power to regulate the tolls in such a way that a larger amount can be, and in all probability will be, charged for the transit of coal over the new canal. The tramway is not protected even by any such exception. The question arises—ought not the existing tolls, the ill effect of which upon the town is shown in the petition, to be now revised? And ought the people of Birmingham to pay more than in fairness they should pay, in order that outsiders may get their coal and other articles carried at a low price? As to whether the Corporation rightly represent the inhabitants, the following cases are in point:—*Birmingham Proof House Bill*, 1868 (*Cliff. & Steph.* 125); *Gun Barrel Proof Bill*, 1868 (*ib.* 136); and *Sunderland and South Shields Water Bill*, 1868, (*ib.* 154). Under S. O. 131 it is in the discretion of the Referees to admit parties in the position of the petitioners; and these cases show that the Corporation of Birmingham have heretofore been recognized as representing the traders and inhabitants. In the decided cases Corporations have sometimes been excluded where other parties represented

sufficiently the interests affected. But that is not so here.

Cripps: The same questions have been raised here as were raised in the House of Lords, and the Committee there, having the merits of the case before them, as well as the technical question of the right of the petitioners to appear, decided that they had no *locus standi*. The bill contains nothing prejudicing the rights of the petitioners. The Corporation are really objecting to the existing tolls, and they take this opportunity, when the company is in Parliament for something else, to try to revise the tolls of 1846. Now the general principle on which a *locus standi* is given is "that there is something in the bill which, if passed into a law, will injure the parties petitioning." (Cliff. & Steph. *Practice*, 10).

Mr. RICKARDS: That doctrine is quite admitted. The only question is—whether there is anything in this bill which affects the petitioners? If the bill applies the existing tariff of tolls to the new canal, it will be a re-enactment of the tolls *quoad* that portion of the canal. How far the petitioners would be able to go into the whole question of the tariff depends upon circumstances. But technically they say that the proposed extension of the canal, and the proposed power to levy the existing tolls upon that extension, gives them the right to be heard.

Cripps: In 1846, when the canal was amalgamated with the London and North Western, the whole question of rates and charges was thoroughly investigated, and in that Act, a tariff of charges was inserted which the bill does not seek to alter. The canal company do not take power to charge any toll at all upon this new piece of canal, but intend to make a present of it to the public. We can charge no tolls in respect of any works except by Act of Parliament. Under clause 10, as it originally stood, the promoters took power to levy toll upon this little bit of canal, but the power has been surrendered. Under the Act of 1846 tolls are only to be taken in respect of all or any of "the said canals," being the canals existing at that time.

Mr. RICKARDS: Though no power to take tolls can exist without express legislation, yet when tolls are given in a certain Act applying to the existing canals of the company, and the company promote a bill to add to those canals—declaring that the new canal shall form part of the undertaking of the company for all purposes—the question is whether that does or does not empower the company to take in respect of the new canal the tolls authorised by the previous Act?

Cripps: A declaration that the canal shall form part of the undertaking cannot carry with it a power to take tolls. The bill incorporates all the provisions of the Act of 1855 only so far as they relate to branch canals, excluding those particular parts which refer to tolls; consequently all parties interested in the traffic of the Birmingham canal have a present made to them of this new bit of canal.

Mr. RICKARDS: What are the words of the original Act giving authority to take tolls?

Cripps: The words are "existing canals," and

not "undertaking;" and therefore tolls leviable under that Act cannot apply to the proposed extension, to which clause 10 will apply. Express powers would be required in order to levy toll upon the new canal. As to the allegation that the Company will be empowered to use their property for almost every purpose except that of developing their canal—the Corporation of Birmingham have nothing to do with that. The canal proprietors are bound according to their Act "for ever thereafter, at their own costs and charges, to maintain the existing canal." If such a ground of objection were to prevail, every builder who attempted to build on his own land might be interfered with. With respect to the tramway, that has nothing whatever to do with tolls on the canal; but instead of mine-owners bringing their minerals by cart or waggon to the canal, they will bring them by the tramway. For the use of this tramway a toll of 2d. will be paid, which has never been objected to by the only parties who have the slightest interest in objecting to it, viz., the freighters. The Corporation are not the proper parties to appear. The parties really interested in tolls are the traders and freighters upon the canal. Consumers have no more right to be heard in favour of a reduction of tolls on a canal which carries their coals than they have to inquire into the rate of wages paid by coal-owners to the miners who work in the pits. The traders and freighters are not petitioners. The Court will not be misled by the decisions cited. In the *Birmingham Proof House Bill* the proposal was that two members of the Corporation should be put upon the governing body.

Mr. RICKARDS: And that fact showed that the bill was thought to affect peculiarly the interests of the borough.

The *locus standi* of the petitioners was Disallowed.

Agents for Bill, Martin and Leslie.

Agents for Petitioners, Sharpe, Parkers, and Pritchard.

NORTH LONDON TRAMWAYS BILL

26th May, 1870.—(Before Mr. ST. AUBYN, M.P., Chairman; Sir J. DUCKWORTH; and Mr. RICKARDS.)

Petitions of (1) THE LONDON AND NORTH-WESTERN RAILWAY COMPANY; (2) NORTH LONDON RAILWAY COMPANY.

Tramways—Railway Bridges—Interference with—Roadway of—Competition—Tramways Act, 1870—Provisional Orders—Rights of Petitioners against—Practice—Postponement of Decision—Rehearing.

A railway company urged that they were entitled to an unlimited *locus standi* as land-owners against a tramway bill on the ground that some of their bridges would be crossed and injuriously affected by the tramways.

The promoters insisted that the soil of the roadway, as distinguished from the bridge itself, was vested in the parish authorities in each case, not in the railway company:

Held, that the petitioners had a *locus standi* limited to the clause authorising interference with bridges; and this limitation was affirmed after renewed argument and the citing of further authority.

The same bill was also opposed on the ground of competition by two railway companies. Neither of the petitions, however, specified any points as those between which competition was likely to arise; and only one of them alleged that by means of the tramways the promoters sought to "divert from their railway system traffic which would otherwise be accommodated by it:"

Held, that neither company had a *locus standi* on the ground of competition.

Semle that "*The Tramways Act, 1870*," does not give to petitioners against provisional orders authorising tramways any greater rights than those previously enjoyed by petitioners against private bills.

Rees (Parliamentary agent): As agent for several Tramway Bills, both in London and in the country, I have taken objections to the *locus standi* of railway companies against those bills; and as the decision of this case will govern other similar cases, I submit that the Court should not decide without hearing counsel on behalf of the Tramway companies promoting other Bills as well.

Pritt (Parliamentary agent) concurred in the application.

Shrubsole (Parliamentary agent, for the promoters) objected to the postponement of the decision.

Rees: The course which I have proposed is constantly adopted by Committees in cases where two bills before them relate to the same object.

The CHAIRMAN: The Court are of opinion that they must follow the usual course, and decide this case to-day.

The bill had for its object to authorise the construction of tramways, to be called "*The North London Tramways*," along divers streets and public roads of the metropolis.

The London and North Western Company complained that several of the proposed tramways would cross their railways, e.g. the Edgware Road tramway would pass over their main line at Kilburn, the Finchley Road tramway would pass over the Primrose Hill tunnel, and the Hampstead Road tramway would pass over their main line at Granby Street. For the purpose of these crossings petitioners' railways and their bridges, works, lands, and other property would be interfered with in an objectionable manner, and so as to impede the safe and convenient

passage of their traffic. The petitioners also alleged that by means of the tramways the promoters sought to divert from the railway system traffic which would otherwise be accommodated by it.

The *locus standi* of the petitioners was objected to because (1) no land, building, or property of theirs was taken by the bill; (2) at the points of crossing, the tramways would be laid upon the surface of, and level with, the roadway, without interference either with the structure of any bridge or of the tunnel; and with the surface of the roadway the street authorities and not the petitioners had to do; there would be no such diversion of traffic as alleged, and if there were, the petitioners had not shown how the competition would arise: interference with the actual structure of the bridge and tunnel was the only point (if any) on which the petitioners ought to be heard, but there was no ground, according to practice, for hearing them.

Merewether, Q.C. (for petitioners): We rely upon the interference with certain bridges belonging to us; and also on the competition which will arise under the bill. These bridges will be interfered with by the laying of the tramways.

Mr. RICKARDS: In whom is the bridge, and the obligation to maintain it, now vested?

Merewether: The bridge in each case was built by us, and, I presume, we are liable to maintain it.

Sir JOHN DUCKWORTH: That is as to the bridge: but the question here is, as to the roadway?

Merewether: Section 46 of the Railways Clauses Act, 1845, makes us liable to maintain the roadway.

Mr. RICKARDS: Do the railway company, or the parochial authorities, pay for the repairs?

Merewether: We may not have been called upon, in the particular instance; but there can be little doubt of our liability, as we maintain similar bridges on all parts of our system. At all events, if the bridge falls, the surface of the road would go with it, and we should be bound to restore both.

Shrubsole (Parliamentary agent, for promoters): Until the bridge falls, the surface of the road over the bridge is vested in the street authorities.

Merewether: Not according to the interpretation which has been put by the Law Courts on the word "approaches," in section 46 of the Act of 1845, or according to the constant practice of Quarter Sessions. These establish the liability of railway companies for repairs.

Mr. RICKARDS: What you call interference with bridges consists in the passing of the tramway over the top of the bridge which crosses your line. How does that affect the Company?

Merewether: It is possible, for instance, that a carriage might get off the tramway, knock down the parapet of the bridge, and fall on a train passing below. It is sufficient to show that injury may result from the proposed interference with our line. (*Woolton Gas Bill*, 1867, *Cliff. & Steph.* 60). The promoters themselves admit that we have a right to be heard, for they have inserted Clause 20, purporting to

be for our protection, which says that:—"Whosoever the tramway shall be constructed upon a bridge carrying a road over a railway, the following provisions shall apply; (a) The company shall give fourteen days' notice in writing to the railway company whose railway is crossed, of the intention to commence the construction of the tramway, and shall at the same time send sufficient specifications, or other information to show the nature of the interference with the bridge; (b) if the engineer of the railway company shall be of opinion that the mode proposed of constructing the tramway will render the bridge insecure and injure it, and no method is agreed on of constructing the tramway to the satisfaction of the said engineer, the matter shall be referred to some engineer to be agreed upon between the parties, or, if they cannot agree, to be appointed by the Board of Trade, and the award of such referee shall be binding on both companies; (c) the works on the bridge shall be executed under the superintendence and to the reasonable satisfaction of the engineer of the railway company." We also claim a *locus standi* on the ground of competition. We say "that by means of the intended tramways the promoters of the said bill seek to divert from the railway system of our petitioners traffic which would otherwise be accommodated by it." The promoters reply that the statement is not sufficiently specific. The competition is patent on the face of the map; but if the Court think otherwise, S. O. 126 allows a more specific statement to be handed in to the Committee. The tramways will run from Chalk Farm to the vicinity of Euston Square.

The COURT: Are there not omnibuses running upon that route now?

Mereuether: Yes, and also cabs; but none that so directly compete with the railway as these tramways propose to do.

Shrubsole (in reply): The petitioners complain of "interference," but there is no special allegation of injury to the structure of the bridge. They may be entitled to be heard against clause 20, if that is insufficient for their protection, but not to a general *locus standi*. No case of competition has been shown; and I further rely on the admission that the parish maintain the roadway over the bridge.

By the COURT (after deliberation): The *locus standi* of the petitioners is *Allowed* against clause 20 (protecting bridges over railways).

Mereuether: Will the Court allow me to call attention to the effect of the decision just pronounced, which, I take it, confers a limited *locus standi* in respect of contemplated interference with our bridges. There is a well-known decision in "the post case" (*London and North-Western Railway Bill*, 1868, *Cliff. & Steph.* 63), to the effect that interference with a post in which the railway company had but a joint ownership, confers an unlimited *locus standi*.

Shrubsole: It is very unusual to continue the argument after the Court has given its decision.

Mr. RICKARDS: I suppose counsel is about to contend that the effect of the decision is to confer a larger *locus standi* than the words would imply?

Mereuether: Precisely; the wording of the

present decision would not give me the larger *locus standi* which was held to be inevitable in "the post case."

Mr. RICKARDS: But there, apparently, the post rested on the soil of the petitioners, and was taken under the bill. Here, though the bridge may be yours, it does not clearly appear that the soil belongs to the company?

Mereuether: The piers of the bridge are ours, and rest upon land the property of the company.

Mr. RICKARDS: The question is as to the roadway over the bridge—whether the soil so clearly belongs to the railway company as to make them the landowners?

Mereuether: The bridge, as a whole, is ours; therefore the roadway must be ours.

Shrubsole (for promoters): After their former decision, it would hardly be respectful for me again to address the Court.

By the COURT (after deliberation): We will hear you, Mr. Shrubsole.

Shrubsole: The precedent cited does not apply. The petitioners are not possessed of that which will be interfered with, i.e., the road, for the road was there before the bridge was built. None of their property is taken; the bridge, even, is not theirs; it is a bridge for public purposes, and they could not venture to remove it.

Mr. RICKARDS: Can you divide the bridge from the piers of the bridge?

Shrubsole: What is interfered with is no part of the bridge, but the earth resting upon the arch of the bridge. At worst, they are only injuriously affected; none of their property is taken. The question can be fully discussed upon clause 20.

After further deliberation by the Court,

The CHAIRMAN said: The Court have to repeat the decision which has already been given. The petitioners are *Allowed* a limited *locus standi* against section 20 of the bill.

Agents for Bill, *Dyson & Co.*

Agent for Petitioners, *Blenkinsop.*

Petition of (2) the NORTH LONDON RAILWAY COMPANY.

These petitioners stated that they were owners of an undertaking expressly constructed for, and affording a complete, cheap, and adequate communication between the city of London and the northern suburbs. Upon this undertaking they had laid out upwards of £3,000,000, and were still expending considerable sums with a view of enabling them to afford increased accommodation to the public. Several of the tramways now proposed would compete with them for traffic; and whilst the petitioners had been compelled to purchase, at a cost of nearly £2,000,000, the land occupied by their railway, the promoters proposed to appropriate portions of important streets and roads without any payment. The public property would, therefore,

be, in fact, devoted to the profit of a trading company, and by means of it they would be enabled to carry on unfair and unequal competition with petitioners and other railway companies.

The *locus standi* of the petitioners was objected to, because (1) no land, building, or property of theirs was taken or used; (2) the promoters denied that any such competition as alleged would arise; and, in any case, the petitioners ought to have stated which of the 27 tramways proposed would compete with them; (3) the other allegations in the petition as to the inexpediency of tramways, their inapplicability to the metropolis, and the obstructions which they might cause, were not matters upon which the petitioners could be heard, none of the streets along which the tramways were to be laid being vested in them; (4) no ground for a hearing was shown, according to practice.

Johnson, Q.C. (for petitioners): We claim to be heard mainly on the ground of competition; but the promoters cross our line also, passing under the bridges, however, instead of over.

Sir J. DUCKWORTH: There is nothing about bridges in your petition.

Johnson: Ours is essentially an omnibus line, there being no less than 9 stations in 5½ miles. With such a traffic, how can we specify the points between which competition will arise? If that be necessary we shall have to travel over a great part of the line and present a petition of inordinate length. In the *London and North Western Railway Bill*, 1869 (Cliff. & Steph. 109) petitioners obtained a *locus standi* against a line to Bolton, having previously been heard against a line in that direction, though not actually going to that place. The tramways between Chalk Farm and Farringdon Street are in like manner in the direction of the city, and so far in competition with our line to Broad Street. The ground of that decision applies, for there is a reasonable apprehension of danger on our part.

Mr. RICKARDS: Is there not some difference between the formation of a road which did not exist before, and placing upon an existing road a new mode or style of conveyance?

Johnson: Mine is the stronger case, for it is not the extension of existing competition, but the establishment of a new and distinct competition that we complain of.

Mr. RICKARDS: This is, in point of fact, putting a new style of carriage upon the public road?

Johnson: Yes, but still to carry on omnibus traffic. Omnibuses have been heard against tramway bills; surely we have a stronger claim, after the money we have spent in establishing this route. The general measure of this session relating to tramways expressly contemplates the hearing of petitions, even after the Board of Trade has granted a provisional order.

Mr. RICKARDS: But they would still be petitioners with the same rights as ordinary peti-

tioners, not with any absolute right of being heard.

The CHAIRMAN: The clause does not give you such a right of being heard as to preclude the necessity of your coming here.

Merewether, Q.C.: The clause in the general bill was introduced at the instance of the railway companies. Originally it was to have been an absolute certificate in place of a provisional order.

Sir J. DUCKWORTH: And against a provisional order you would be, as petitioners, in precisely the same position that you are in now.

Shrubsole (Parliamentary Agent, for promoters): Practically, the matter is left to be dealt with, as before, by this Court; and in the present case, competition is out of the question between a railway running from Chalk Farm to Broad Street and a tramway from Chalk Farm to Farringdon Street. We rely, moreover, on the objection that the points between which competition is alleged ought to have been stated, in order that the promoters of the bill might know what case they had to meet.

Locus standi Disallowed.

Agents for Petitioners, Paine & Layton.

LONDON STREET TRAMWAYS BILL.

30th May, 1870.—(Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of (1) the METROPOLITAN RAILWAY COMPANY; (2) the LONDON GENERAL OMNIBUS COMPANY.

Tramways—Railway Companies—Competition—Frontagers—S. O. 132—Construction of—Omnibus Companies—Interference of Tramways with Streets—Street authorities—Private persons interested in traffic—Representation.

A railway company petitioned against a tramway bill on the ground of competition; and also in respect of interference with the frontage of a public-house rebuilt by them upon surplus land acquired for the purposes of the railway, and now let upon lease. The competitive portions of the promoters' lines of tramway had been abandoned by agreement with a distinct company which was to undertake their construction:

Held, that the petitioners were not entitled to be heard on the ground of competition; and as landowners, had only such a limited *locus standi* "as was given them under S. O. 132." On the other hand, an Omnibus Company, which also petitioned against the tramways, and raised no case of competition, succeeded in

establishing a general *locus standi* against the bill, on the ground of interference with the surface of the streets upon which they themselves plied for hire; notwithstanding the objection that their interest in the public streets was merely that of the general public.

(*Per cur.*) "A street authority does not represent all the interests that may be affected by interference with the roads."

The bill was one "to authorise the construction of street tramways in certain parts of the metropolis; and for other purposes." The petitioners who, in addition to their own line, worked the St. John's Wood and Metropolitan District railways, objected to the powers sought, as establishing an unfair competition with them; and they also objected, as frontagers, whose premises would be injuriously affected under the bill.

The *locus standi* of the Metropolitan railway was objected to because (1) no such competition would result from the bill, or the works to be thereby authorised, as would, according to practice, entitle petitioners to be heard; (2) none of the lands, property, railway stations, &c., of the petitioners were taken or used, nor any facilities affecting their undertaking acquired; (3) no sufficient interest in the objects and provisions of the bill was shown.

Holway (for petitioners): We claim a *locus standi*, first on the ground of competition. According to the bill as deposited, one of the tramways came down the Hampstead Road and Tottenham Court Road, and another down the Old St. Pancras Road to King's Cross, and thence to Blackfriars, the latter route being in direct competition with the Metropolitan railway to Farringdon Street. In consequence, however, of an agreement with the North London Tramway company (under which each company is to make a portion of the line) the promoters now propose to abandon the tramway down Tottenham Court Road and that to Blackfriars. We ought not, however, to be excluded merely because part of the competing route, instead of being made by the promoters, is to be made under agreement by another company.

Pope, Q.C. (for promoters): The Metropolitan railway will have their *locus standi* against the bill brought in by the other Tramway company.

Holway: We are also entitled to be heard as coming within the S. O. founded upon the resolution of the Select Committee on the General Tramway Bill. That S. O. (132), passed since our petition was framed, provides—"That the owner or occupier of any house, shop, or warehouse, in any street through which it is proposed to construct any tramway, and who alleges in any petition against a private bill or provisional order that the construction or use of the tramway proposed to be authorised thereby will injuriously affect him in the use or enjoyment of his premises or in the conduct of his trade or business, shall be entitled to be heard on such allegations before any Select Committee to which such

private bill or the bill relating to such provisional order is referred." We are the owners of a public-house at the corner of Hampstead Road which we were obliged to buy.

Pope: This is a matter not in your petition, but advanced now to get the benefit of the S. O. You must prove that you are the owners of the house, and that the construction of the tramway will injuriously affect you in the use and enjoyment of the premises.

Holway: It is enough that we are owners of the house; it is not for the Referees to determine whether we are injured by the tramway or not.

Mr. RICKARDS: Sometimes when a landowner alleges that his land will be affected and that allegation is disputed, the Referees are obliged to take evidence. So in this case, if the fact alleged, that the tramway will interfere with the use or enjoyment of the petitioners, as owners of these premises, be disputed, evidence must be given to show that they own the premises which will be so obstructed.

Holway: The injury to the petitioners is that there will be an exchange station in front of the house, which will injure its value.

Sir JOHN DUCKWORTH: Do the promoters contend that it is necessary for the petitioners to show that they are anything more than owners of the house?

Pope: We contend that it is necessary for the petitioners to show that they will be injuriously affected in the use and enjoyment of the premises. The S. O. was framed to provide for a special case, not of a landowner whose land is taken, but of a person whose land is not taken, but whose interest in his premises may be injuriously affected. Though the words of the S. O. are "owner or occupier," the meaning is that the owner must be a person who will be injured in his occupation of the premises. The man who merely takes the rent of the premises is not the person contemplated by the S. O.

Mr. RICKARDS: Put the case of injury accruing to premises, causing a decrease in their value, and so affecting the owner who receives the rent?

Pope: Under the S. O. the occupier is the person to be heard.

Holway: The S. O. was framed expressly to meet such cases as the present. The words of the S. O. are "owner or occupier," the first word being intended to meet the case of damage to a man as owner, and the other to meet the case of damage to a man as occupier.

Mr. RICKARDS: Do the petitioners contend that an owner who lets his premises to somebody else, and who lives perhaps a hundred miles off, can be injuriously affected in the use or enjoyment of his premises by the construction or use of the tramway?

Holway: He should be admitted to show that he will be limited in the use and enjoyment of his property; that is to say, prevented from letting it on equally good terms.

[Evidence became unnecessary upon the admission by the promoters of these facts:—That the Metropolitan railway company, when constructing their railway, had been obliged to take down the house in question and rebuild it; that it was now occupied by their tenant

as a public-house; and that in front of it would be placed a terminal station of the tramway.]

Holway: If the S. O. had been meant to apply only to the case of an occupier, words would have been inserted to restrict an owner from appearing unless he were also an occupier. An owner, therefore, who may be injuriously affected in the use and enjoyment of his premises, though not in the conduct of his trade or business, is within the S. O.

Pope (in reply): The Court will construe this S. O. as an ordinary Court would construe an Act of Parliament. They will endeavour to get at what was in the mind of the Legislature at the time they employed this phraseology, and they will look at what was the mischief intended to be cured. The S. O. was framed to meet the case of Messrs. Shoolbred, and of shopkeeping interests in Oxford Street and elsewhere, persons whose business would be affected if access to their establishments were interfered with; and the resolution of the Select Committee, on which the S. O. is based, obviously points, not to the mere owner of property whose rights are interfered with, but to the occupier whose trade or business may be injured. The owner is left in the same position as in the case of a railway; that is to say, if the railway takes his land he has a *locus standi*, but if it only comes in front of his property he has no *locus standi*. In the case, however, of the occupier who, but for this S. O. would have no *locus standi*, Parliament has said, "we see that the working of these tramways may have some injurious effect with regard to the exercise of your business, and you shall have a *locus standi* to place your case before the Committee."

Mr. Rickards: If the S. O. applies to an owner, he will stand in a better position *quoad* tramways than he stands in *quoad* railways.

Pope: The intention clearly is to admit a special class; not the class of owners generally, with every variety of intermediate interest. It is impossible to say that the owner, unless he be also an occupier, is a person who will be injured in the use or enjoyment of the premises by the laying down of tramways. As to competition, what have the petitioners to do with a tramway along the Hampstead Road and up to Camden Town?

The CHAIRMAN: You need not go into the question of competition. We will give our decision to-morrow.

On the following day (May 31st),

The CHAIRMAN said: The Court are of opinion that the petitioners are entitled to such a *locus standi* as is given them by the S. O. (132).

Holway: You mean that we are not at liberty to go into the question of competition?

The CHAIRMAN: Yes.

Holway: Whatever the Committee may think we are entitled to go into under that S. O. you allow us to do?

The CHAIRMAN: Yes; but it is confined to the S. O.; it is a special *locus standi* limited to the S. O.

Limited locus standi Allowed.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Burchells.*

Petition of (2) the LONDON GENERAL OMNIBUS COMPANY.

This petition recited that under the bill the promoters were empowered to make tramways with "all propperrails, plates, works, and conveniences," to open and break up streets, and to use on their tramways "carriages with flange-wheels, or wheels specially adapted to run on a grooved rail;" that the company were to have the exclusive use of their tramways, and all other persons using them, except by agreement with the company or by licence from the Board of Trade, with carriages having flanged or other suitable wheels, were to be subject to a penalty of £20 for every offence; that a penalty of £20 was to be inflicted on parties obstructing a tramway carriage, and that persons offending against bye-laws made by the company were to be subject to a fine of £5; that the proposed tramways would impede and injure the ordinary traffic of the streets, in which the petitioners were licensed to ply for hire; that in the business carried on by them they employed a great number of carriages and horses, and it was of essential importance that their carriages should be allowed to ply and carry passengers as they had always done, free from obstruction from iron rails or other dangerous works or impediments; that the petitioners' carriages and the conduct of their servants were under the supervision and regulation of public Acts relating to metropolitan stage carriages and the metropolitan streets, and that among the streets in which they were so licensed to ply were those in which the tramways were proposed to be laid, these streets being nearly all main thoroughfares in populous neighbourhoods; that if, in the opinion of Parliament, tramways in the metropolis were advantageous, they ought not to commence in the character of unrestricted monopolies, working a suppression of all other modes of land conveyance and competition, and that the powers sought would in effect confer such a monopoly on the promoters; that the petitioners and other persons using the streets would be excluded from using them as freely as heretofore, and that no one company ought to acquire an exclusive right to any system of transit upon the public highways or streets of the metropolis.

The *locus standi* of the petitioners was objected to because (1) no such competition would result from the bill, or the works thereby authorised, as entitled them to a hearing; (2) no land, house, property, right, or interest of theirs was taken or affected under the bill; (3) the right of user enjoyed by the petitioners in the streets in which tramways would be laid down was a right in common with the rest of the public, and did not entitle petitioners to be heard, nor were they the proper persons to represent the interests of the public; (4) they had no sufficient interest in the objects and provisions of the bill.

Coates (Parliamentary agent, for petitioners): The capital embarked by the petitioners in this undertaking is about £600,000; they employ 7000 horses, running 30,000 miles a-day; and they contribute £45,000 a-year to the public revenue. Their claim, however, to a *locus standi* does not rest upon the ground of competition,

nor upon interference with access to premises, but upon the general principle that the tramways will injuriously affect their interests in the use of the public streets. They are licensed to carry passengers by particular routes, in which accordingly they are interested, and they allege that the tramways proposed to be authorised will injure their carriages. Generally speaking, no doubt, where there is a representative body, that body is properly heard on behalf of the public; but where a single class of individuals has an interest distinct from or inconsistent with that of the representative body, that class may be heard, supposing always that the individuals composing it have a sufficient interest. There is an analogy, under the S. Orders. Members of a joint stock company or corporation cannot be heard, as a rule, against their common seal; but if their interests are adverse to those of the company or corporation, then, under the S. O., they may be heard.

Sir J. DUCKWORTH: Not necessarily "adverse" interests?

Coates: I went further than I need have done: it suffices if the interest be special or distinct. Apply that doctrine here. It is a matter of economy for a local authority to hand over part of their streets and roads to a tramway company who agree to maintain, not only the tramway, but a large part of the road beyond it. This lightens the rates and relieves ratepayers of a heavy burden. The local authority, therefore, have a direct pecuniary interest in the establishment of tramways; they have no motive for objecting, but every motive for assenting to such schemes. Accordingly they are not the parties to represent us. Moreover, the large interests of the petitioners place them on a totally different footing from other persons using the streets. As to the injury which the tramways will work to carriages, vehicles, and horses, and the monopoly which will be given to the tramway company, we have a right to be heard, more especially as no one else is to be heard against the principle of the bill, the railway company being excluded. The clauses are so worded, that if an omnibus were to pull up for passengers in front of one of the carriages on the tramway, the omnibus driver would be required to show that he had lawful excuse for doing it. Then the promoters take power to make bye-laws for regulating the travelling upon or working of the tramways.

Pope: For that clause we shall substitute sections in the General Tramway Bill, limiting the power of the company and authorising the local authority to make bye-laws. The understanding is that where the bill conflicts with the general legislation about to be adopted, it shall be made consistent with such general legislation.

Coates: The usual course is to take the bill as deposited. If clauses from some other bill are substituted, we have a right to be heard upon them, for the traffic on the road where the tramway will be laid is the thing by which we live. One of the recommendations in the fifth report of the Committee (Mr. Cardwell's) on Railway and Canal Bills points out that it is by the admission of opponents to be heard against a bill that the real merits of a measure are

sifted. The promoters say as little as possible about their own proposals; the facts are elicited in discussing the objections, and without them Parliament would be legislating in the dark. Out of this report grew the S. O. upon competition, which renders the hearing of opponents, not an absolute right, but a matter of discretion. It is far more important that opponents should be heard upon tramway bills than upon railway bills. There the companies purchase the land and work the line at their own risk; but here, without purchase, the public property will be assigned to promoters for purposes of private profit, for long periods and without any practical remedy to the public. Those who, in ordinary circumstances, would represent the community cease to do so in these tramway bills, and if other petitioners, having a sufficient interest to justify their opposition, are excluded, bills conferring upon individuals for their private advantage monopolies to a certain extent in public property, will pass without investigation at the hands of Parliament. This bill strikes at our very existence: have we not a right to be heard?

Pope (in reply): The petitioners are really seeking, not a *locus standi* against a private bill, but upon a private bill to obtain a *locus standi* to object to public legislation. There is hardly a point to which they have referred which is not provided for and dealt with in the General Tramways Bill. As a matter of policy, they say, it is expedient for Parliament to open a wide door to opponents of private bills; and they ask accordingly, to be heard upon such questions as interference with streets, the power of street authorities to permit the construction of tramways, and the user of streets by the general public. But the petitioners have already been heard on these questions; not only when the tramway bills were before Parliament last year, but before the select committee on tramways this year; and Parliament has heard all they have got to say upon the subject. They have no interest in the particular street along which the tramway will be laid, except as members of the general public. As to licence, the omnibuses are not licensed to use the streets; their licence is to carry passengers and receive tolls from them. The quality of the interest possessed by the petitioners is the same as that possessed by a man driving his phaeton along the street, and the largeness of their interest does not alter the case. Suppose, as against a corporation, the largest ratepayer in the borough claimed the right to appear, would he be entitled to a *locus standi*? Is there any case in which a single proprietor or trader has been heard in opposition, whatever the extent of his business?

Mr. RICKARDS: A single firm has been allowed to appear—the Messrs. Baird.

Pope: The fact shows that it was an exceptional case. What is to be the test of sufficiency of interest? If the petitioners' argument be good for an omnibus company, it is good for the Parcels' Delivery Company, or for Pickford's.

Coates: Omnibus companies have been heard against tramway bills (*Liverpool Tramways Bill*, 1868: Cliff. & Steph. 120).

Pope: That case is to be distinguished from the present.

Mr. RICKARDS: My recollection is that the main ground of the decision in that case was interference and obstruction.

Pope: The omnibus proprietors there not only alleged competition, but they were interested as ratepayers in maintaining the very roads along which the carriages of the tramways proposed to run. There is no allegation of the kind in this petition. The question simply amounts to this: there being a local authority to whom the repairs and maintenance of the streets and highways are entrusted, whose consent is required before the bill can pass, can any member of the public, however large his interest, be admitted to raise questions which the street authorities alone can properly raise?

Mr. RICKARDS: The duty of the street authorities is the conservation of the streets and roads, an object which possibly may be well provided for by the bill; and yet to those who use the streets for the purpose of trading and business, there may be an obstruction quite distinct from that against which the street authority is bound to guard.

Pope: Still it is only the same interest which the general public have.

Mr. RICKARDS: The street authority does not represent all the interests that may be affected by interference with the roads.

Pope: As to the section of the general bill which gives the local authority the right of interfering with the traffic and regulating it, the petitioners have laid no ground for urging that its provisions are unsatisfactory to them. The mere fact that one man has twenty omnibuses, while somebody else has only one carriage, does not affect the principle that a member of the general public has no right to be heard in respect of interference with roads. In a case where road trustees applied for an act to vary their trust with reference to certain roads, I represented the very largest omnibus proprietor in Lancashire who used the roads affected by the bill, and his *locus standi* was disallowed by the Committee on the bill, because, it was said, he had no more right to use the road than any other member of the general public. What these petitioners are seeking is not public benefit, but private advantage.

Mr. RICKARDS: Take the case of a tramway bill, the provisions of which would necessarily have the effect of preventing omnibus traffic from being carried on at all, in particular streets. In such a case, would the petitioners have a *locus standi* against the bill, as a body of traders whose profit was made by traversing the streets proposed to be closed against them?

Pope: They would, if they came as a class of traders.

Mr. RICKARDS: Then it becomes a question of degree?

Pope: In such a case it must be the petition of a class of traders representing the general and public interest, not the petition of a particular individual who may get provisions inserted in the bill for his own benefit.

Mr. RICKARDS: The Omnibus company is a very large partnership?

Pope: It is; but the petitioners have no greater interest in the preservation of the road, than the general public have.

Mr. RICKARDS: They have a different interest from the proprietor of a private carriage, inasmuch as they make their living by traversing the streets and roads.

Pope: But they can hardly be admitted as representatives of the public rights, which is the character in which they desire to come before the Committee. Suppose we bought off the petitioners and settled with them, what would become of the general public?

The *locus standi* of the petitioners was allowed.

Agents for London General Omnibus Company, Dyson & Co.

NORTH METROPOLITAN TRAMWAYS BILL.

31st May, 1870.—(Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petitions of (1) the NORTH LONDON RAILWAY COMPANY; (2) SIR E. T. COLEBROOKE, BART., M.P.; (3) HAY AND STRAW SALESMEN; (4) TRUSTEES OF THE PARISH OF ST. MARY, WHITECHAPEL.

Tramway Bill—Competition with Railway—Frontagers—S. O. 132—Market—Interference with—Salesmen—Market trustees—Lord of the Manor—Representation—Practice—Amendment of Petitions—Omitted Allegations.

A railway company petitioned against a tramway bill and failed to obtain a hearing on the ground of competition, the allegations on that head being made in very general terms; but were allowed to amend their petition by the introduction of allegations, gaining for them a *limited locus standi* under the new S. O. 132 as to frontage.

Against the same bill petitions, complaining of interference by the tramways with a street in which, on three days in the week, a market was held, were presented by the salesmen of the market, the lord of the manor, and the trustees of the parish. The two latter were interested in the produce of the market-tolls; the former lived by the market; and all concurred in stating that, if

the tramways were laid down and kept clear, the market-carts must go elsewhere. The lord of the manor further claimed as owner of the soil of the street :

Held, that all three acts of petitioners had a *locus standi*, notwithstanding the fact that the local street authorities were also petitioners, and not objected to.

The bill was one empowering the North Metropolitan Tramways Company to abandon portions of their authorised undertaking, and to construct additional tramways.

The *locus standi* of the North London railway company (whose petition was almost identical with that lodged by the same company against the *North London Tramways Bill*—(ante, 84) was objected to because (1) no lands, houses, or property of the petitioners were taken ; (2) no sufficient case of competition was disclosed ; (3) the tramways proposed would not compete as alleged with the traffic of the railway ; (4) petitioners had no right or interest in the streets entitling them to be heard against the laying of the tramways ; (5) the petition disclosed no ground for a hearing according to practice.

Richards, Q.C. (for the railway company) : It is proposed that one of the tramways shall go from Highbury to the Bank ; this will compete with our line from Highbury to Broad Street. The North London is essentially an omnibus line, and carries that class of traffic most liable to be interfered with by these tramways. We also claim a *locus standi* under the S. O. passed as recently as the 24th of May, being owners and occupiers of the station at Highbury, and the dwelling-house occupied by the station-master, and also owners of a public-house fronting the road along which the tramway is to be laid. Though that circumstance is not alleged in our petition, no doubt we shall be allowed to amend it to that extent.

Rodwell, Q.C. (for promoters) : The S. O. has been very recently passed, and as it would be open to the petitioners to amend their petition hereafter, or to present a fresh petition under it, I shall raise no objection to the silence of their existing petition about the station and public-house at Highbury. They should be confined, however, to interference with these premises, and not allowed to go into general questions. As I read the S. O., interference with the use or enjoyment of the premises means something physical or mechanical, either in the construction of works or by bringing a greater amount of traffic into the street. If the railway company alleged in an amended petition that their trade in the public-house would be injured by the construction of the tramway, I should concede their right to be heard on that point ; but the essence of their petition is competition. This will not be a new competition, for there is omnibus traffic at present ; it will be merely a development of existing competition. Moreover, it is not competition of the same character. This ground of *locus standi* is only recognised where railway

opposes railway or tramway ~~competes~~ with tramway.

The CHAIRMAN : We consider that the North London railway company are entitled to such a *locus standi* as is given under S. O. 132, and is that only.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Paine and Layton.*

* * * The petitioners undertook, by arrangement, to furnish the promoters with a statement in writing of the allegations upon which, as disclosed in ~~argument~~, the *locus standi* had been granted ; and the promoters undertook to raise no objection to the omission of these allegations from the petition as deposited.

Petition of (2) Sir E. T. COLEBROOKE, Bart. M.P.
" (3) HAY AND STRAW SALESMEN.
" (4) TRUSTEES OF THE PARISH OF ST.
MARY, WHITECHAPEL.

(One of the proposed tramways would pass along High Street, Whitechapel, and interfere, as was alleged, with the weekly hay and straw market held in that place. The petitioners were persons variously interested in this market.

The *locus standi* of Sir E. T. Colebrooke, Bart. M.P., was objected to because (1) there was no provision in the bill whereby any right or privilege of his under charter, or (2) any interest of his in tolls was repealed, altered, or interfered with ; (3) no land or building of his was taken or used ; (4) no ground for a hearing was shown according to practice.

The *locus standi* of the hay and straw salesmen was objected to because (1) there was no provision altering or interfering with the market, or the tolls and dues therein ; (2) the rights or interests of the petitioners were only affected, if at all, in the same manner as those of all other persons using the market, and being only two firms and two individuals they were not, according to practice, entitled to be heard ; (3) they had no sufficient interest in the matters complained of ; (4) no adequate ground for a hearing was alleged.

The *locus standi* of the market trustees was objected to because (1) they were not the owners of the market, and had no right or interest therein entitling them to be heard ; (2) there was no provision under which the market-tolls, or (3) the powers, duties, or privileges of the trustees under their Acts, or otherwise, could be altered or interfered with ; (4) they had no sufficient interest in the trade of the parish ; (5) they were not, under S. O. 131, the municipal or other authority having the local management of the town or district ; (6) no ground was disclosed for a hearing according to practice ; (7) they were not entitled to a hearing against the preamble or clauses, inasmuch as they did not pray to be heard.

Macdaurin (Parliamentary agent, for Sir E. T. Colebrooke) : High Street is within the manor of Stebunheath, otherwise Stepney, of which petitioner is the lord. A weekly market for the

sale of hay and straw has been held there since 1664, under charter granted by Charles II., and petitioner derives a considerable revenue from the tolls. He is advised that in the event of these tramways being sanctioned, the ground now used for market purposes will be insufficient, and the market itself will be obstructed, causing annual loss to him, whilst his property in High Street, Whitechapel, will likewise be prejudicially affected and lessened in value. The Whitechapel Improvement Act of 1768 and subsequent Acts contain clauses recognizing the title of the petitioner to the tolls of the market. If he be lord of the soil on which the tramways are to run, and the tolls of his market are affected, one would think his *locus standi* was self-evident.

Mr. RICKARDS: Where is the market held?

Maclaurin: In the street itself. The highway is covered with hay and straw carts, which stand on the very ground the promoters seek to occupy with their tramways.

Rodwell, Q.C. (for promoters): Room is left at present, between the lines of hay and straw carts, for the passage of carts and carriages.

Maclaurin: But measurements show clearly that if tramways are laid in the lines proposed it will be impossible to hold the market at all: there will not be sufficient space left. Hence there will be a direct taking away of most, if not the whole, of the revenue derived from the market. The question of degree of interference, however, is for the committee, as soon as we have satisfied the Referees that Sir E. Colebrooke is the owner of the street, and entitled to hold a market there.

Mr. RICKARDS: In what sense is Sir E. Colebrooke the owner of the street?

Maclaurin: He is owner of the market under the original grant and the Acts of Parliament. His is not a mere right to user of the street, but, as lord of the manor, the soil is his. He is also the ground landlord of some of the houses in the street.

Rodwell: The petition does not allege that he is owner of the soil of the street.

Maclaurin: In the book of reference the promoters describe him as one of the owners or reputed owners of High Street: he has also had notice served on him in that character.

Mr. RICKARDS: Who maintains the roads?

Maclaurin: The Whitechapel district board of works. It may be said that Sir E. Colebrooke is represented by them. But can they represent him in respect of compensation? This, moreover, is not provided by the bill.

Shrubsole (Parliamentary Agent, for the hay and straw salesmen): The market is held every Tuesday, Thursday, and Saturday throughout the year. Upon an average, 65,000 loads of hay and straw are sold there annually, and the market adds greatly to the prosperity of the neighbourhood. These tramways, in the line proposed, if they do not altogether prevent the holding of the market, must so obstruct it as materially to lessen the business carried on, to our great loss and injury. The number of carts standing in the street on market days averages from 200 to 500. Though the petitioners are only four in number, they are all the sales-

men in the market, and represent a business long established. We also claim a *locus standi* under the new Standing Order (132) as being "owners or occupiers" of premises and offices abutting upon High Street, in the use or enjoyment of which we shall be injuriously affected. Petitioners live by the market, which the bill interferes with.

Mitchell (Parliamentary Agent, for the parish trustees): This hay and straw market is the most extensive in the metropolis, and the site where it is held is most convenient for the inhabitants of the east end of London. Under the Whitechapel Improvement Act, 1853, the trustees are empowered to regulate the market and receive a toll of sixpence for every load of hay sold. Of these tolls one-third must be paid to the lord of the manor of Stepney, and the remaining two-thirds, less the expenses, are applied, as to one-half, in reduction of the paving rate chargeable on the occupiers of property in High Street, and as to the remaining half in reduction of the paving rates of the whole parish. The amount received during the past year from these tolls was £488 11s. 8d.; to that extent the trustees are accordingly affected by the bill. Further, the holding of this market benefits the trade of the parish by bringing a great number of persons there who buy and sell; its removal therefore must injure the petitioners and the other inhabitants. As matters stand, High Street is only sufficiently wide to enable the market to be held, and if any portion is taken off for the tramways there will not be room enough for the waggons, and it will be very difficult to hold the market elsewhere in the parish.

Rodwell (in reply): The bill is hedged round with safeguards to the public which the petitioners have lost sight of. The Metropolitan Board of Works, who have control over all matters connected with the streets and the arrangement of traffic, and whose consent is a condition precedent to the passing of the bill, petition against it; and as their *locus standi* is not disputed, the several inconveniences alleged can be discussed upon their petition. Again, the bill provides that the road authorities—in this case the district board of works of Whitechapel—shall be consulted on all matters connected with interference with the streets: they are also petitioners against the bill, and their *locus standi* is not objected to. The parish trustees must surely be represented by one or other of these bodies. In bills promoted to a certain extent on public grounds, the promoters ought not to be harassed by an unnecessary number of opponents. It has been assumed that a tramway is similar to a railway, and that the promoters are going to take possession, to the exclusion of others, of so much of the roadway as their carriages pass over. But the great feature of these tramways is that they are on a level with the ground, and, except at the actual moment of transit, the roadway will be free to everybody, as at present. Though the tramways are fixtures, they offer no obstruction; the hay carts on the other hand are not fixtures, and can be moved at the discretion of the Whitechapel trustees. It is not necessary that they should stand in rows of six

or seven deep. The General Tramway Bill and the new S. O. (132) are proofs that Parliament does not intend that everybody who fancies he has a grievance should be heard; he must show a special grievance. Otherwise, every seller of hay in Hertfordshire, and every carter who brought a load of hay to the market might say he had a right to be heard. We do not admit that the construction of the tramway will present any serious interruption to traffic, and in any case, the guardians of the streets are the proper persons to bring that matter forward. Sir E. Colebrooke is merely in the position of one of the public; he is not the owner of the street, but has an interest in the tolls arising from hay sold. The market, *quâ* market, will not be interfered with; and there is no decision establishing that a lord of a manor ought to be heard against a scheme interfering with street traffic. The standing room of the carts is not taken away.

Mr. RICKARDS: How will the traffic of the streets be carried on while the tramways are being constructed?

Rothwell: A small portion of the tramways will be constructed at a time; and by arrangement with the authorities, no doubt this will be done upon days when the market is not held. Injury can only arise to Sir E. Colebrooke from interruption of the traffic; and this is a matter in the hands of the street authorities. Serving a person with notice as a landowner does not necessarily give him a *locus standi*; such notices are only served in many cases *ex abundanti cautela*.

MacLaurin: We are also named in the book of reference.

Rothwell: Only as "owner" or "reputed owner;" not a very positive statement, and one which could not alter the fact of ownership, one way or the other. In any case, as lord of the manor his interest in the roadway must be very remote. As to the alleged ownership by the hay salesmen of premises abutting on the tramway, their petition is silent on that point: it is wholly directed to interference with the market. If they are allowed a *locus standi* at all under the new S. O., it ought to be limited to interference with the use or enjoyment of their business premises, and they should not be allowed to go into general questions.

The COURT (after deliberation) *Allowed* the *locus standi* of all the petitioners.

Agents for Sir E. Colebrooke, *Loch & MacLaurin*.

Agents for the hay and straw salesmen, *Dyson & Co.*

Agent for the trustees of the parish, *Mitchell*.

BIRMINGHAM WATER BILL.

15th June, 1870.—(*Before Mr. DODSON, M.P., Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.*)

Petition of the CORPORATION of BIRMINGHAM.

Water Company—Additional Sources of Supply—Petition by Corporation—Effect of, against existing Legislation.—Filtration and Covered Reservoirs—Previous Petition in House of Lords—Practice.

The Birmingham Water Company proposed to extend their limits of supply, and to introduce water from fresh sources, but without alteration of rates or additional money powers: the water thus obtained was to be filtered, but before distribution it would be mixed with the unfiltered water now supplied:

Held, that the Corporation of Birmingham had a *locus standi* against all the clauses of the bill to which their petition related, although they had previously petitioned and obtained clauses in the House of Lords, and their object avowedly was to apply to existing works, and still further to extend, the provisions as to filtration and purity, inserted in the bill with regard to the proposed works.

The bill was one "to authorise the Company of Proprietors of the Birmingham Waterworks, to extend their limits of supply, to construct further works, and for other purposes." Before a committee of the House of Lords (the Earl of Derby, chairman), the Corporation had been already heard, and had procured the insertion of certain clauses; these, however, were treated in the Second House as insufficient.

The *locus standi* of the petitioners was objected to, because (1) in the House of Lords the petitioners only opposed a portion of the preamble relating to the extension of limits, not objected to in their present petition, which proposed for insertion a number of clauses; and counsel having been already heard and evidence called as to these, petitioners, according to practice, were not now entitled to be heard against the preamble; (2) the bill did not propose to alter or affect the authorised rates or charges for water, nor to raise additional capital, nor to borrow further monies; (3) by clause 6, the Company were obliged to filter water to be obtained under the bill, and by clause 29, the Corporation were empowered to appoint a person to test the quality and quantity of the water; accordingly the allegations relating to filtration and purification had reference only to water supplied by the company under their existing Acts of Parliament, and in effect com-

d of past legislation; (4) no such injury to tititioners or ground was shown as accord- practice entitled them to a hearing.

son, Q.C. (for petitioners): The Cor- on, under the Improvement Act relating mingham, require a large supply of water blic purposes, and in common with the in- ants, are interested in securing a pure and some supply at moderate rates. They ascertained that the waters of the Blythe őrne, after the filtration contemplated by ll, will be mixed with other and unfiltered supplied by the company from distinct s, including Plants Brook, the waters of are much polluted, and will be stored in e uncovered reservoir at Aston, near Bir- am. These unfiltered waters are derived from wells and partly from brooks in the őrne, and although the waters may mparatively pure when first raised, they e so much impregnated with solid r by exposure in an open reservoir to the s vapours arising in the neighbourhood of a manufacturing town, that it is necessary ould be filtered and purified before dis- ion for domestic use. We submit accord- that clauses should be inserted in the bill, ling for the adoption of the best known s of filtering and purifying the whole of waters supplied by the company; for ing the Board of Trade or other proper ndependent authority to institute, if neces- an official inquiry as to the quality or ity of such supply; and among other s, one providing for the efficient testing, the authority of the Corporation, of every urnished by the company. In the House ds our *locus standi* was not objected to, e were heard on all the points on which e seek to be heard, and also on others as e of which the Committee granted, in part, we asked for. Wherever a water company to change or even to improve its sources of y, the Corporation have a right to ask for e granting them a voice in the regulation e company's affairs. Powers to extend works have been from time to time con- on gas and water companies; those powers umed to last for a certain time, on the ation of which the progress of science has in cases rendered it necessary to impose r regulations, which originally were not ht necessary. In such cases municipal s have always been allowed to present their . If gas companies come before Parlia- nt with a bill, the Corporation of the are allowed to appear, and say that the inating power ought to be raised. Here satter is of infinitely greater consequence the illuminating power of gas, viz., the y of water. The Corporation complain that water supplied from the existing sources, ing the much polluted Plants Brook, is l in a large uncovered reservoir. In ouse of Lords we proved that the water supplied was not filtered at all, and was ut in such a state, that the distributing carts were found to be full of shells and s, small and large animals, fishes alive and and toads alive and dead. The promoters'

engineer said those things were generated in the pipes. If allowed to go before the Committee, the Corporation will now be in a position to prove that these things are not generated in the pipes, but are sent in with the water, which is first supplied in a bad state, and then kept in uncovered reservoirs in the neighbourhood of a manufacturing population, where acids are continually produced in the air, and absorbed by the water, and the generation of animal and vegetable matter is caused. A clause in the bill provides for filtering the new water-supply, but the promoters admit that this requires filtration less than the old. They say, indeed, that filtration clauses should have been de- manded by the Corporation in 1855, when the Company were empowered to take water from the present sources. But in 1855 or even in 1866 the Corporation did not know all they now know. For not only has the progress of science altered the requirements with respect to purity of water in a large town, but drainage has largely increased in the neighbourhood. We, therefore, desire to apply clause 6, which relates to the filtering of the new supply, to the old supply as well. Secondly, we ask for covered reservoirs; that is to say, for clauses similar to those imposed upon all the London water com- panies in 1852. Previously, the London com- panies were practically in the same position as these promoters; they had vested rights to supply water in an unpurified state, which they took from the Thames. By a general Act, how- ever, brought in against the water companies in 1852, they were all compelled, first, to go higher up for their supply; secondly, to filter the water; thirdly, to keep the water in covered reservoirs. No machinery is provided for doing the same thing at Birmingham, unless the Corporation are heard against the bill brought in by the water company. No doubt it will be said that this bill does not deal with the existing state of things at all. But the pro- moters' engineer has admitted that the water both from the new and the old sources must be supplied mixed, and must come into the same reservoir. So this absurd result will follow: that of the mixed waters, one half is to be filtered, and the other half is not. The town will be injuriously affected, if the bill is passed without proper clauses for protection of the inhabitants being inserted, and these clauses will not be inserted unless the Corporation are heard. Apart from our general claim, we have a tech- nical *locus standi* in respect of the new sources of supply, the provisions as to which are defective in not providing for covered reservoirs. We do not ask to be heard against the preamble, but merely upon clauses. Those referred to in ob- jection 3 are not sufficient for our protection; and as to revision of past legislation, not a single gas or water bill is brought before Parliament in which the Corporation, or the public authority of the town, is not allowed to ask that "past legislation" shall be improved. It is, moreover, a common thing, in the case of a gas or water bill, for a Corporation to ask that either agree- ment or compulsory purchase clauses shall be inserted, not merely as to new works, but old works as well, though these may have existed

for fifty or sixty years. If this argument as to revision of past legislation is good as an objection to our *locus standi* here, it ought to be equally good in Committee; but there it is never taken. If the objection prevails now, there is an end of powers of purchase by Corporations.

Venables, Q.C. (for promoters): S. O. 131 leaves it in the discretion of the Referees to admit a Municipal Corporation to be heard; but as to the town of which such Corporation is the governing body, it must be alleged that it will be injuriously affected. Here there is no such allegation.

Mr. RICKARDS: The 8th paragraph alleges that "there are other clauses and provisions in the bill which are injurious and unjust to your petitioners, and to the water ratepayers and inhabitants within the borough."

Venables: When specific objections to a bill are made in a petition, such general allegations have no effect whatever. There are no specific allegations in the petition, as required by S. O. 126, that the town will be injuriously affected by the bill. The promoters do not seek to alter the rates or to raise fresh capital. They only desire to increase and improve the supply of water, and to give the town a greater benefit. How can this "injuriously affect" the town? As to existing grievances and the progress of science, has science progressed very much since 1856? In that year a bill was passed with the ultimate assent of the Corporation, settling all those matters which the petition now proposes to re-open.

Mr. RICKARDS: What are the clauses in this bill which were inserted or modified in the House of Lords, at the instance of the Corporation?

Venables: Clause 6 (requiring water from the Bourne and Blythe to be filtered by the Corporation); Clause 29 (power for Council to appoint a person to test the quality of the water); and Clause 30 (as to the supply by the Corporation of water for public purposes). The petition, clause by clause, is directed to matters existing in the borough, and not against any provisions of this bill. Though the Corporation may be entitled to represent the inhabitants in respect of domestic supply, or as to the quality of the water, they are certainly not entitled to represent purchasers of water in the matter of meters. The proper people to petition on that head are the traders, and not a single trader has done so. In 1857 the Corporation obtained power to purchase the property of the water company whenever they chose, on certain terms. If they can now impose obnoxious restrictions on the company, and thus diminish the value of the property, they will not have so much to pay for the concern when they choose to exercise their power of purchase.

By the COURT (after deliberation): The *locus standi* of the petitioners is *Allowed* against those clauses of the bill to which the prayer of the petition relates.

Limited locus standi Allowed.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Sharpe, Parkes, and Pritchard.*

[REDACTED]

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CLIFFORD AND STEPHENS'S *LOCUS STANDI* REPORTS.

VOL. II., PART II.

COURT OF REFEREES

ON

Private Bills in Parliament.

C A S E S

AS TO

THE *LOCUS STANDI* OF PETITIONERS

DECIDED DURING THE SESSIONS OF 1871-2.

REPORTED BY

FREDERICK CLIFFORD & PEMBROKE S. STEPHENS,

BARRISTERS-AT-LAW.

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P R E F A C E.

PART II., now issued, completes Vol. II., of REPORTS OF CASES HEARD BEFORE THE COURT OF REFEREES IN PARLIAMENT. The present Reports include the whole of the Cases decided by the Court during the Sessions of 1871 and 1872, and are, by permission, based on the same official records as were placed at the disposal of the Reporters in the preparation of their published Reports for the Sessions 1867-8-9 and 1870.

To facilitate reference, an Alphabetical Index has been added of Bills and Petitions heard during the three years 1870-1-2, together with a copious Index of Subjects.

Part I. of Vol. II., issued in 1871, contains the cases decided by the Court during the Session of 1870, and the order of paging and general arrangement adopted are such that both Parts may be bound together as one volume.

The system, adopted in Part I., of prefacing each report with a short statement of the facts, and, as far as possible, of the principle involved in the case, has been found useful in practice, and has accordingly been continued.

Vol. I. contains a Treatise on the Practice of the Court of Referees; with Reports of Cases heard during the Sessions of 1867-8-9.

ELM COURT, TEMPLE,
March 1, 1873.

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COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1871.

Where a Standing Order is quoted or referred to in the Reports, the numbering is that of the Standing Orders for the Session 1873.

CORPORATION WATER BILL.

1871.—(*Before Mr. DODSON, M.P., and Mr. BONHAM-CARTER; and Mr. M.*)

of the CORPORATION OF BRADFORD.

1—Municipal Corporation—Proposed in bulk to Local Board—Competition—of District of another Corporation—Health Act, 1848, section 75.

A local corporation promoted a water bill, empowered them, by agreement, to supply in bulk to the local board of any place in the borough. The bill was opposed by the corporation of Bradford, who had powers to supply with water certain parts of the borough. The bill was opposed on the ground that such a case of competition was made out as to sustain the *locus* of the petitioning corporation.

The Bradford Waterworks Act, 1856, the Acts of Dewsbury, Batley, and Heckmondwike were jointly empowered to establish a corporation for the supply of their three respective districts. The Act also authorised the united corporation to supply any person, owner, or occupier of land or tenement, though such land or premises was not situated within the district of the corporation, on such terms and conditions as might be determined, contingently upon an ample supply being given to all the inhabitants of the districts. Batley having obtained an incorporation, the new corporation introduced a bill for the establishment of water-

works of their own, and empowering them (clause 22) from time to time, by means both of the Dewsbury, Batley, and Heckmondwike waterworks, and of the waterworks contemplated by the bill, to supply water within the borough, and, by agreement, also outside the borough. Clause 24 provided that "The corporation, and any local board or local authority for the time being having power to distribute or supply water in any district or place adjoining the borough of Batley or the conduit or line of pipes of the corporation," might, from time to time contract and agree for the supply by the corporation of water in bulk to such local board or local authority.

The petitioners stated that by the Bradford Waterworks Acts, 1854 to 1869, they were authorised to construct waterworks, and supply water to Bradford, Gomersal, and the several other places included within their limits, and in constructing the waterworks so authorised, had expended nearly a million sterling. They alleged that some of the towns and places within their limits of supply adjoined or were near the borough of Batley and the conduit or line of pipes proposed by the bill, and that if the bill became law, the whole of these places might be brought within its operation; that they, the corporation of Bradford, had entered into agreements with the local boards or local authorities of many of these places, and were now supplying water under such agreements; that under the bill the promoters would be empowered to enter these very towns, and interfere with the rights, powers, and privileges of the petitioners, and with those of the local authorities; an interference which was altogether unnecessary, inasmuch as all these towns and places were provided with water supply.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs were taken, no waters of theirs diverted or abstracted, no Acts of theirs altered or amended, and none of their powers, jurisdictions, rights, or authorities appropriated; (2) the petitioners had not the sole and exclusive power of supplying water within the places mentioned, and the bill would not deprive them of such statutory rights and powers as they

now possessed; (3) the bill would not interfere with any agreement entered into between the petitioners and any local board or other authority, or with any other agreement referred to in the petition; (4) the petitioners were not the guardians of the rights and interests of the local authorities, and were not entitled to be heard in their support; (5) petitioners were not entitled to a hearing consistently with practice.

Denison, Q.C. (for petitioners): The point to be discussed is practically this:—Whether the Bradford corporation, being empowered by various Acts of Parliament to supply with water divers places in their own neighbourhood, are entitled to be heard against a corporation which is seeking now, for the first time, to supply local boards as well as persons beyond their own and within our limits? The Act of 1856 provided that it should not be lawful for the united board to furnish water to persons outside their own district, unless the inhabitants of the district received an ample supply. It is only a contingent power, therefore, to be exercised when they have complied with such and such conditions; and the promoters do not allege that these conditions are complied with. Indeed, the fact of their coming for this bill is an admission that they have no supply of water beyond what is necessary for their own district. The question is, have we, in the proper and usual sense of the word, the sole and exclusive power of supply within some of the places mentioned by name in our Acts? Is there any general or special Act that gives anybody else the power to supply concurrently with us? There is no such Act. By the general Acts from 1848 downwards, powers are given to local boards to supply themselves with water, always subject to this condition, that where any person (which is extended to "corporation") or public body is supplying water within the limits of their Act, then the local board is not entitled to compete with that person or corporation, without trying to make terms with him or them, subject to an arbitration. Even if the promoters have power to supply, here and there, a few persons outside their own district, they have no power to do what they are asking to do, namely, to supply a local board. Clauses 22 and 24 of the bill, taken together, are an extension of their powers and an entire alteration of the constitution of the promoters. By their Acts of 1856 and two or three following years, they were constituted for the purpose of supplying their then three districts. They now seek to extend their powers to any place adjoining the borough of Batley, practically embracing all the places mentioned in our petition.

Venables, Q.C. (for promoters): I do not admit that any one of them adjoins the borough of Batley.

Denison: Then I must give evidence on that point. Clause 24 gives them power to supply water to any district, not merely adjoining the borough but adjoining the "line of pipes," and by consent they may lay lines of pipes in any place they like. As to the practice of the Referees in granting a *locus standi* on the ground of competition, the S. O. was made expressly for the purpose of dealing with railways, and such a S. O. must leave a discretion to the Court; but when you have two rival companies supplying gas

or water within the same limits, there can be no discretion; and if you give a *locus standi* in one case, you must always do so. I cannot find in the books a single instance where parties in the position of the petitioners have not been heard; and, further, I cannot remember a single instance of late years, either in the case of gas or water supply, where, when they have been heard, the two sets of parties have been allowed to continue in competition with one another. Competition in water and gas is now found to be a mistake, for it is not beneficial to the ratepayers to create two sets of capital. We have power to supply all these places; we are supplying a great many of them; we have abundant means of supplying them, because we increased our powers last year. *Ex concessis*, they have not the means, because they are coming for further powers now, and these powers are with a view to compete with us. Then we have the public Acts directed strongly against competition; and the practice of Parliament has been invariably in the same direction.

Venables (in reply): The bill simply enables us, in certain cases, to do for a local board what we have power to do for private consumers. Under the Public Health Act (section 75), every local board may contract with any waterworks company for the supply of water, and by the interpretation clause, "Waterworks company" includes "corporation." Therefore local boards may purchase from a corporation; but we, without a clause like that in the bill, should have no power to sell. The corporation of Batley has no monopoly, and if any private person thought it worth his while to set up waterworks, he might at once sell water in bulk to a local board, though it might be within the limits of the Bradford Waterworks Act.

Mr. RICKARDS: The condition in Clause 75 of the general Act refers to the construction of works.

Venables: Yes, a local board may buy from anybody, but before constructing new works, they must apply to the existing company or corporation. It would be a forced construction to hold, that to make use of works is the same as to construct works. A local board may come to us and buy water in bulk, but we cannot sell it to them in bulk unless we take power to do so, not being able, under this bill, to do anything which is inconsistent with the general law. The powers we ask for are entirely permissive. I admit that they would be an injury to the petitioners if they had an absolute monopoly, but their petition does not even show any competition. We take no power to supply any place by name except Batley, but we do take power in the 24th Clause to supply places adjoining the borough, or adjoining our conduit or line of pipes, and the petitioners have not alleged that any of the places referred to in their petition do adjoin either Batley or line of pipes. Such places may be as near as you please, but if they do not adjoin they will not be affected by the bill. The petitioners say, "you may lay down a line of pipes, and then those places may adjoin." But if you look at Clause 8, you will see the meaning of "line of pipes;" it is synonymous with "conduit."

Denison: There is no interpretation clause to say that line of pipes means conduit.

Venables : The line of pipes is for the same purpose as the conduit, and cannot mean any pipeage that we may put down elsewhere.

Mr. RICKARDS : Will all these conduits or lines of pipes be within the borough of Batley ?

Venables : Most of them will be out of it. The supply is derived from some distance, and these conduits are the means by which the supply is to be taken to the borough. The petitioners say they have agreements with local boards. If so, those local boards will have to fulfil the agreements. When a town like Bradford gets power to appropriate large sources of water-supply, it is reasonable that it should be put under the obligation of supplying all the places around, which have a natural claim on those sources of supply, and generally a great many more places are put into the bill than are actually supplied. The petitioners do not say how many of those referred to in their petition are supplied. Suppose one of them adjoins our conduit. They do not allege that they supply it, or mean to supply it. Are we therefore not to take power to sell to the local board of such district in bulk ? If a local board is prohibited from dealing with us, it will remain prohibited, notwithstanding the bill. We do not relieve any local board from any restrictions to which they are at present subject by law.

Denison : You would put yourselves in the position of being a second company in the district, there being only one now.

Venables : We take power to supply water in bulk to the local board ; we do not give the local board power to buy ; and if the local board has not the power to buy, it will still be unable to do so. There is not the least doubt, however, that several of those local boards would have power to buy ; perhaps all of them. The petitioners may not physically or practically be able to supply these places, and we only take power to supply them in that case as far as we have the right to do so. Clause 22 refers to the same sort of power as we have already under section 94 of the Act of 1856, i. e., by agreement to supply people outside the borough.

Denison : Subject to restrictions which you now repeal.

Venables : The restriction is that it shall be lawful for the united boards to supply water outside the borough after we have fully supplied our own district. That is a restriction which does not affect the petitioners at all ; it is for the protection of Batley proper. Surely all the companies and corporations having power to supply water in Yorkshire cannot come and petition against this bill because we use rather a wide term, and ask to supply water by agreement outside the borough, though we do not say that we are to supply it within the district of any other company. It is consistent with the petition that the districts of the petitioners may be so situated that we could not supply any of them, and yet there may be a district which it would be very desirable that we should supply through the local board. It was in the power of the petitioners to give you that information, but they do not state that any one of the local boards in their district would be able to buy water from us. They have not raised a case of competition or of any monopoly with which we interfere.

The CHAIRMAN (after consultation) : We should like to know whether any of the places enumerated as being within the district of supply of the Bradford corporation adjoin the borough of Batley or its existing or authorised conduit or line of pipes.

[Mr. Charles Gott (surveyor of the borough of Bradford), was then examined ; and as the result of his evidence,]

Mr. RICKARDS said : Without going into the question of lines of pipes, Gomersal is within the limits of the Bradford supply, and Gomersal adjoins the borough of Batley.

Locus standi Allowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Fearon & Co.*

ILKLEY LOCAL BOARD BILL.

9th March, 1871.—(*Before Mr. DODSON, M.P., Chairman ; Mr. BONHAM-CARTER ; and Mr. RICKARDS.*)

Petition of (1) JOHN SNOWDON and others.

Local Board of Health—Gas and Water Companies—Purchase of their Undertakings—Borrowing Powers—Owners of Property—Ratepayers—Representation.

[*The St. Helen's Borough Improvement Bill, 1869, considered.*]

A bill promoted by a local board, *inter alia*, for the purchase of the undertakings of a gas company and a water company, with money to be borrowed for that purpose, was opposed by 83 owners of property and ratepayers, out of a total population of 2,500, on the ground that the sums proposed to be raised were excessive, having regard to the wants and circumstances of the district :

Held, that the doctrine of representation applied, and that the petitioners were bound by the acts of the local board.

The bill was one "to confirm the purchase of the undertaking of the Ilkley waterworks company, to authorise the construction of new waterworks by the Ilkley local board, to authorise the said local board to provide a recreation ground, and to purchase the undertaking of the Ilkley gas company ; and for other purposes."

The petitioners, 83 in number, described as "owners of property rated to the rates of the Ilkley local board, or inhabitants and ratepayers within that district," objected to the provisions of the bill, as authorising an excessive outlay in order to obtain very doubtful advantages. The *locus standi* of the petitioners was objected to,

because (1) no land or property of theirs was taken or interfered with; (2) the powers conferred by the bill were not of an extraordinary or unusual character, and the petitioners or their property were not subjected to any special injury or loss not applicable to the owners of property or ratepayers generally; (3) the petitioners had not any interest entitling them to be heard against a bill promoted by the local authority of the district; (4) the general grounds of objection urged were inadequate; (5) the petition had not emanated from any meeting of owners of property or ratepayers, and no such meeting had been held.

Pembroke Stephens (for petitioners): Ilkley is a small district on the borders of Yorkshire, with a residential population of only 2,500, and an aggregate rateable value of £16,000. The local board take power to borrow £20,000, which we say is an excessive charge, that will depreciate the value of property in the township. Where injury of this kind is apprehended owners of property have been heard. (*St. Helen's, &c., Bill, 1869, Cliff. & Steph. 55.*)

Mr. RICKARDS: A circumstance which was rather peculiar in that case was that the bill would have repealed the exemption enjoyed by the petitioning landowners from certain rates.

Stephens: Similar consequences will follow from the imposition of the new and permanent burdens of which the landowners here complain. A local board differs in many respects from a corporation, being merely a creature of statute, and having its powers strictly defined by the Public Health Acts. It has power, for instance, to contract for public lighting with an existing gas company, but none to take the lighting into its own hands, or to buy up a company compulsorily and defray the cost out of the rates. Neither is there anything in the general Acts to warrant a local board in setting up in business both as a water company and a gas company—undertakings which may entail serious liabilities and losses upon the ratepayers. The conditions and restrictions attached by the Public Health Acts to the exercise of borrowing powers by local boards are altogether set aside by this bill. The doctrine of representation is not always insisted upon. (*Aberdare Gas Bill, 1870, 2 Cliff. & Steph. 24.*)

Mr. RICKARDS: With respect to the allegation, that the petitioners "will be subject to new and permanent burdens," does that mean new in amount or new in kind?

Stephens: Both new in amount and new in description.

Mr. RICKARDS: What are the burdens which are new in description?

Stephens: First, the interest upon money to be borrowed for the purchase of these undertakings; next, the liability to make good losses, if any, sustained in their working, which now fall upon the shareholders in these companies respectively.

Mr. RICKARDS: In the *St. Helen's* case there was an alteration in the description of the burdens. An exemption was taken away, and certain property was made liable to a new description of burden.

The CHAIRMAN: And I think in that case the petitioners were brought under a different local authority—they were transferred from one local authority to another.

Stephens: The change here is, that the local board is transformed into a trading company, while the owners of property and ratepayers are subjected to onerous debts.

Round (for promoters): There is nothing special in this case: it is merely that of a municipal body undertaking what they think best for the general community. Local boards are elected both by owners of property and ratepayers, and accordingly become their mouthpiece—just as corporations represent the ratepayers. Unless a local board sought power to do something which the general Act did not provide for, they would not come to Parliament at all. It is their duty to supply the inhabitants with water, even though difficulties may arise in doing so compelling them to seek for special legislation; but unless there is something unusual in the bill, or unless there are special circumstances placing the petitioning ratepayers in an exceptionally disadvantageous position, the general doctrine of representation applies. These petitioners only sign for themselves—i.e., 83 out of 2,500—and there has been no meeting or other evidence of feeling in the locality against the bill.

Locus standi Disallowed.

Agents for Petitioners, *Dorington & Co.*

Agents for Bill, *Sherwood & Co.*

Petition (2) of FRANCES DIXON and others.

Local Board—Waterworks—Diversión of Streams from Fish-pond, Grounds, and Dwelling-houses—Landowners—Unlimited locus standi as.

A bill authorising a local board to construct waterworks, and for that purpose to divert certain streams, was opposed by landowners and occupiers through or by whose grounds or houses these streams flowed:

Held, that the petitioners were entitled to a *locus standi* as landowners, though it was urged that the waterworks were designed by the local board for the accommodation of the district in which the petitioners resided.

The bill (*inter alia*) authorised the construction of additional waterworks. The petitioners complained of the injury to their properties which would result from the proposed diversion of streams, &c.

Their *locus standi* was objected to, because (1) the stream referred to would be abstracted for the purpose of supplying the township with water, and the property of the petitioners, being situated within the township, would be entitled to supply from the works of the promoters, and therefore no special injury would accrue to the petitioners; (2) the other allegations, not relating to

the stream, were of a general character, not entitling the petitioners to oppose a bill promoted by the local board of the district; (3) they were not sufficiently numerous and did not represent a sufficient proportion of rateable property to be heard as a class; (4) the petition was not adopted by any meeting.

Baxter (Parliamentary Agent, for petitioners): Frances Dixon is the owner, and W. Douglas the occupier, of a mansion at Ilkley, through the grounds of which flows a stream supplying a fish-pond, adding greatly to the beauty of the property. One of the works authorised by the bill will intercept and divert the waters of this stream.

Mr. RICKARDS (to promoters): Can you resist the *locus standi* of Frances Dixon as a landowner?

Round (for promoters): I withdraw the objection as far as Mrs. Dixon is concerned. But how are the other petitioners interested?

Baxter: They state that they are "the owners or lessees of other lands, houses, and hereditaments situate in the said town of Ilkley, through or under which some or one of the said streams of water proposed to be taken by the said bill, or streams derived therefrom, flow, and such water supply is good, ample, and free of cost to your last-mentioned petitioners, and of considerable value to their respective properties."

Round: But is any actual injury alleged?

Mr. RICKARDS: The petition says that "the abstraction of the water and the diversion of the streams from the said lands, houses, and hereditaments of your petitioners will greatly depreciate the value thereof to all parties interested therein, either as owners, lessees, or occupiers, and they strongly object thereto."

Baxter: The water flows close by their houses, and indeed under some of their houses, and through their lands.

Round: If the fact be so, I cannot press my objection further.

Locus standi Allowed.

Agents for Petitioners, *Baxter, Rose, & Norton.*

WATFORD GAS AND COKE BILL.

9th March, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of the WATFORD LOCAL BOARD OF HEALTH.

Gas Company—Complaints against—Local Board—Suggested Transfer of Undertaking to—Policy of Transfer—Objections partly admitting right to be heard—S. O. 129—Practice.

In a case in which the petitioners prayed to be heard against the whole bill, while the objections to *locus standi* only applied to clauses :

Held, that the promoters had in substance admitted the right of the petitioners to appear; and *locus standi* allowed accordingly.

This was a bill "for incorporating the Watford gas and coke company, and for enabling them to supply gas within the parishes of Watford and Bushey, in the county of Hertford; and for other purposes." The company had already supplied the town for some time by arrangement.

The petitioners were the local board of Watford, and alleged, amongst other things, that they, together with the inhabitants of Watford, had good grounds of complaint against the company, the gas supplied being inferior in quality and very deficient in pressure; and they alleged that it would be for the public advantage if the bill provided for the transfer to the petitioners of the gas undertaking, and that if the works were in the hands of the petitioners, efficiency of supply, at a low price, would be secured to the consumers.

The *locus standi* of the petitioners was objected to, because (1) they do not state in what respects they are injuriously affected by the bill, nor specify the powers conferred upon the company which, in their opinion, may be exercised to the disadvantage of the inhabitants of the district; the allegation is altogether too vague and indefinite; (2) the petitioners are not entitled to interfere with the duties of the company with respect to the supply of gas to "the public," their right being limited to the regulation of the public lamps; (3) it is against all practice, and the petitioners have no right to seek to compel an existing company to transfer their undertaking to a local board unless negotiations for such transfer have been going on. In the present case there has been no negotiation of any kind, and the company decidedly object to transfer their undertaking to the petitioners.

Shrubsole (Parliamentary Agent, for petitioners): The objection to our being heard only refers to clauses, and not to preamble. Moreover, it is one rather to be raised before the Committee than before the Referees. Before the Committee the promoters will no doubt rely on S. O. 129, under which the Committee may call upon us to give in a more specific statement of our objections to the provisions of the bill.

The CHAIRMAN: We should like to hear counsel for the promoters upon the preliminary point raised, namely, that while the petitioners pray to be heard against the whole bill, the objections to their *locus standi* only cover their opposition to clauses of the bill.

Little (for the promoters): The petitioners propose to avail themselves of our coming to Parliament, really to make our bill their bill. If they wanted power to purchase our undertaking, they should themselves have come to Parliament and asked for this power. Such an allegation as they have made ought not to be allowed in any petition. It is not an allegation against any part of our bill; and it is quite a different thing from the insertion in a petition of irrelevant matter.

Mr. RICKARDS: Have you not admitted by your notice of objection the right of the petitioners to be heard against the preamble of your bill?

Littler: No doubt; but the local board are here seeking to make themselves promoters instead of opponents of the bill, and we say that such an allegation ought to be struck out of the petition.

Locus standi Allowed.

Agents for Bill, *Walker & Balfour.*

Agents for Petitioners, *Dyson & Co.*

WESTHOUGHTON GAS BILL.

9th March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of (1) TRUSTEES OF THE DUKE OF BRIDGEWATER.

Practice—Trustees—Single Signature—Power of Attorney—Petition—Sufficiency of Allegations—Gas—Highways—Mines under—Apprehended Injury to Pipes from Subsidence—Adjacent Land-owners—Soil Underlying Roads.

The signature to a petition of one only of a body of trustees will suffice, if it be shown that the remaining trustees have duly authorised such signature, *e.g.*, by power of attorney.

A gas company sought the usual powers of laying down pipes in a mineral district, confining their operations, however, to the streets and highways. The principal landowners within the proposed limits, who were also largely interested in mines, petitioned, fearing that, by fracture of the gas pipes, caused by probable subsidence of the soil, they might incur liability:

Held, that the petitioners were entitled to a *locus standi*, though it was merely to be gathered from the petition, and was not expressly stated, that they were owners of land underlying, or immediately adjoining, the roads and highways over which the bill took power.

This was a bill "for better supplying with gas the township of Westhoughton and other places adjacent thereto in the county of Lancaster; and for other purposes," including the dissolution of a limited company, and their re-incorporation with the usual powers as to breaking up roads, &c.

The petitioners, who objected to these powers, alleged that they were owners, lessees, and occupiers, or otherwise beneficially interested in divers estates, &c. within the limits of the bill, "and of and in mines of coal, cannel, ironstone, clay, and other minerals, and substances lying within and under such and other estates within the same limits, and in and under certain of the turnpike roads, highways and commons there, or parts thereof; and especially your petitioners, as such trustees, own about one third of the whole of the

township of Westhoughton, and nearly the whole of the township of Middle Hutton."

The *locus standi* of the petitioners was objected to, because (1) the bill contained no power to purchase or interfere with any lands, &c. of theirs, or under which they had any mines or minerals; (2) they were not the municipal or other authority having the local management of any township or place within the proposed limits, and were not, therefore, entitled to be heard as to breaking up streets, &c., within those limits; (3) they had no interest entitling them to a hearing according to practice; (4) their petition was not signed in conformity with the rules and orders of the House of Commons.

Rees (Parliamentary Agent, for petitioners): As regards the objection to the signature, I know that a power of attorney exists, authorising Mr. Egerton, who signs this petition, to sign petitions to Parliament on behalf of the Duke of Bridgewater's trustees (and see 2 Cliff. & Steph. 34).

Round (for promoters): Then I withdraw the objection as regards the signature.

Rees: We complain of the powers taken to break up the highways passing through our property. The mains and pipes for conveying gas will be laid over our mines, and may be liable to fracture from subsidence of the soil. In working our mines, according to the custom of the country, we should be protected from liability on this account. The *St. Helen's, &c. Bill*, 1869 (Cliff. & Steph. 64) is on all fours with this case.

Round (in reply): There the petitioner owned the soil under the road and on both sides of the road, and it was further stated that there were minerals under the road. Here, there are no such allegations. We do not touch their private property; and shall only interfere with roads under the Gas Works Clauses Act.

The CHAIRMAN: They state that they own about one third of the township of Westhoughton, and nearly the whole of the other township.

Round: They may own a district, and yet not own the piece of land underlying a particular road. We do not touch a single yard of land which is not now occupied by the public in the shape of a road. And they do not distinctly say that the roads will be touched or interfered with.

Rees: That is unnecessary, for what you seek is a roving power. If my allegation is not sufficiently specific, I can be allowed to amend it.

Round: The injury apprehended is too remote.

Locus standi Allowed.

Agents for Bill, *Wyatt & Hoskins.*

Agents for Petitioners, *Dorington & Co.*

Petition (2) of WESTHOUGHTON GAS COMPANY (LIMITED).

Gas—Rival Companies—Without Parliamentary Powers—Competition—Purchase by Agreement—Gas bought in bulk and distributed.

A bill was promoted by a company without parliamentary powers (*inter alia*) for the re-in-

corporation of the company, the assignment to them of a particular district, and the purchase, by agreement, of the undertaking of another company with limited liability, which already existed in a portion of the proposed district, and was one year senior in point of creation to the promoters' company. This rival company petitioned against the bill :

Held, that they were entitled to a *locus standi*, although they had no parliamentary powers, and although they had no actual works for the manufacture of gas, but procured a supply by agreement from a cotton-spinning company, and distributed this to individual consumers.

The bill was promoted by the "The Westhoughton gas consumers' company," a company with limited liability, established on the 12th April, 1870, and now seeking re-incorporation and statutory powers.

The petitioners complained that the bill took power to invade their district, and also to purchase their undertaking by agreement. Under The Companies' Act, 1862, the petitioners were established on June 28, 1869, to supply gas to Westhoughton and its neighbourhood. They had no manufacturing works of their own, but by arrangement with the Westhoughton cotton spinning company (limited), who had erected gas-works for their own requirements, they obtained a supply and distributed this to 164 consumers in the township of Westhoughton, laying down for this purpose 5,640 yards of mains, at a cost of £1,600, and supplying on the average 5,600 feet of gas every 24 hours.

The *locus standi* of the petitioners was objected to, because (1) no land or property belonging to them was to be purchased by compulsion; there was only a permissive power to purchase by agreement; (2) as a joint-stock company, without parliamentary powers, they could have no claim to light the proposed district or to compete with the promoters; (3) they had no sufficient interest according to practice.

Sargood, Serjt. (for petitioners) : The absence of parliamentary powers in an opposing company is no longer a ground for refusing them a *locus standi* (Cliff. & Steph. *Practice*, 79 : and cases there referred to). Private individuals even have been heard when it was sought to establish competition with them. (*Widnes Gas, &c., Bill*, 1867, Cliff. & Steph. 116 : *King's Lynn Consumers Gas Bill*, 1870, 2 Cliff. & Steph. 4.)

Mr. RICKARDS : What does the bill do to you ?

Sargood : It takes power to buy us up, which is contrary to our desire.

The CHAIRMAN : Your consent is necessary : if they do not succeed in buying you up, what then ?

Sargood : We are an existing company with an actual supply : they exist, but have hitherto done nothing. They may go on as they are, and compete ; but if they obtain a parliamentary status and parliamentary rights, which we have not acquired, these must be destructive to us.

Round (for promoters) : It is, I admit, too late now to argue that a company without parliamentary powers must, therefore, be shut out. But the S. O. give you a discretion. The petitioners might have provided works of their own since 1869 : instead, they have merely agreed with another company, also without statutory powers, for a supply of gas, which might, for anything that appears, be cut off to-morrow. In the cases cited there had been a real outlay of money. But a contingent gas-supply from cotton spinners is not such a vested interest as will support a *locus standi*.

Locus standi Allowed.

Agents for Petitioners, *Norris, Allens, & Carter.*

CEFN, ACREFAIR, AND RHOSYMEDRE WATER BILL.

9th and 13th March, 1871.—(*Before Mr. DODSON, M.P., Chairman ; Mr. BONHAM CARTER ; and Mr. RICKARDS.*)

Petition of (1) the NEW BRITISH IRON COMPANY.

Practice—Company—Petition by—Signatures of Four Directors and Secretary—Sufficiency of—Saving Clause—Postponement of Decision—Water—Agreement to Supply—Apprehended Interference with—Extension of Limits.

Objection was taken to the petition of a manufacturing company having a special Act, on the ground of informality. The petition did not bear the common seal, but was signed by four directors and the secretary "by order of the board." It was stated, however, that the company's deed of settlement and Act of Parliament empowered them to be sued, &c., in the names of two trustees :

The objection was thereupon withdrawn.

The Court being of opinion that a clause saving a particular agreement ought to be inserted by the promoters of a bill, and the promoters having, in the course of argument, declined to insert such a clause :

The decision on the question of *locus standi* was postponed to give the parties an opportunity of coming to some arrangement.

A bill promoted by a water company to extend their limits, but without enlarging their reservoirs or otherwise improving their sources of supply, was opposed by a manufacturing company, which had entered into a ten years' agreement with the promoters for

a fixed supply, subject, however, to the obligations of the promoters under their existing Act :

Held, that the petitioners were entitled to a *locus standi*, for the purpose of obtaining the insertion of a clause saving the agreement.

The promoters were incorporated by special Act in 1866, and sought power by this bill to raise additional capital, and extend their limits over certain intermediate districts and townships, so as to join the limits of the Wrexham waterworks company, to whom they proposed to furnish a supply. No additional works, however, were proposed, or plans deposited; and it did not appear that the Wrexham company enjoyed or had applied for corresponding powers. The petition was headed from "the undersigned directors and secretary," and was signed by four directors and the secretary, "by order of the board of directors." The petitioners, a manufacturing company within the existing limits of the promoters, had entered into an agreement with them in 1869, under the ordinary clause as to the sale by agreement of water in bulk, to pay £275 annually for ten years for a continuous supply of water from 9 a.m. to 6 p.m.: it being stipulated that "the water company shall, so far as lies in their power, keep the large 8-inch main leading from the springs or streams which supply the said water company's works fully charged—so as to maintain, as far as practicable, an equal pressure on and regular flow through the 4-inch main, it being the intention of the parties to this agreement that, subject to the supply of water by the said water company for domestic purposes and their other obligations now existing or hereafter arising under the said Act of Parliament, the said iron company should during the hours mentioned have so much water as can pass through a 3-inch main under such pressure as aforesaid." In the event of the supply proving defective during the hours mentioned, the agreement provided for an extension of the time; and it appeared that this stipulation had been carried out during a season of drought. The petitioners feared that the proposed enlargement of the area of supply would affect their existing rights under the agreement.

The *locus standi* of petitioners was objected to, because (1) no land or property was taken; (2) the existing agreement with them was not affected and could form no obstacle to the agreements with other parties, or the supply of other places by the promoters; (3) the bill in no way altered the relations between the promoters and them; (4) they had no interest entitling them to be heard, according to practice; (5) the petition was not signed in conformity with rule.

Round (for petitioners): As to the formal objection, the petition is signed by four directors and by the secretary. Our deed of settlement and Act of Parliament enable us to sue and be sued, make contracts, and take leases in the names of two trustees.

Wyatt (Parliamentary Agent, for promoters): When the objections were drawn, I was not aware of the constitution of the company: I do not press that objection.

Round: If the bill passes behind our backs, we may be prejudiced materially. At present the main of the promoters ends at our 3-inch pipe, and so the water is dammed up, and we get a pressure; but this will be lost when the water is carried past our works, five miles further, to Wrexham. If, however, a clause is put in compelling the promoters not to let the water go on to Wrexham, whilst it is flowing to us, this will have the effect of damming it up, just as at present.

The CHAIRMAN: Is your apprehension that the bill will over-ride the agreement, or that the proposed extension will incapacitate the company physically from performing the agreement?

Round: They do not tell us how they are going to supply Wrexham; hence we cannot know the exact mode in which injury will arise.

The CHAIRMAN: There is nothing in the bill to release them from the agreement.

Round: But our calculations were based on probable requirements under the Act of 1866. The promoters are now seeking to enter into engagements which had no existence when the agreement was entered into. The arbitrator, in deciding as to the question of pressure hereafter, would feel himself bound by the fact that, in 1871, the limits of supply were extended.

Mr. RICKARDS: The obligation to you is prior to the Act of 1871?

Round: No doubt; but the question would be, how much pressure had been withdrawn from us by virtue of this Act? They are seeking to vary the contract by a side-wind; at least, we are entitled to a saving clause.

The CHAIRMAN (to the promoters): Are you willing to give a saving clause?

Wyatt: No; they want parliamentary recognition of an agreement which is really *ultra vires*.

Round: If the fact be so, the injury done to us is greater, and our claim to a *locus standi* is strengthened. We are within the promoters' district; with whom else are we to make a bargain?

Wyatt (in reply): The petitioners are a private partnership; and before 1866 had to depend on their own sources of supply. They found it convenient to come to us; but are only in the position of ordinary consumers. The clause they ask for would give them a preference over other consumers. For any breach of the agreement they have a remedy at law.

Mr. RICKARDS: Unless you impeach the validity of the agreement, what is your objection to a saving clause?

Wyatt: The power given by the Act of 1866 to supply persons in the position of the petitioners, was subject to all usual reservations and restrictions as to domestic supply. A saving clause, if inserted, might raise a presumption that the petitioners' claim to a supply was of a higher kind.

The CHAIRMAN (after consultation): The Referees think that the promoters should give, and that the petitioners ought to accept, a clause saving the agreement. And in order to give the parties an opportunity of coming to an arrangement on that point, the Referees will postpone their decision on the question of *locus standi* till their next sitting.

At the next sitting of the Court (13th March), Round (for petitioners) said: We have agreed upon a clause to be inserted in the bill for the protection of the New British iron company. With the assent of the Court, the case will accordingly be withdrawn from their consideration.

Wyatt (for promoters): I can now undertake to insert clauses that will satisfy the petitioners.

Round: Upon that undertaking the petition may be withdrawn.

Agents for Petitioners, *Sherwood & Co.*

Petition of (2) the BRYMBO WATER COMPANY, and the RUABON WATER COMPANY.

Water Company—Supply in Bulk by Agreement to Distant Company—Petition by Intervening Companies—Apprehended Invasion of District, or Creation of Quasi-Interest.

A bill was promoted by a water company (*inter alia* for power to sell water in bulk, and by agreement, to another (the Wrexham) company, whose district lay at some miles' distance; without however proposing, in terms, the construction of any new or connecting works, or seeking any powers of supply in the intermediate district. The bill was opposed by two companies whose territory lay between the promoters' district and that of the Wrexham company. The petitioners were apprehensive—first, of direct invasion; secondly, of the creation of a *quasi* interest in their territory, which would hamper them hereafter, if they themselves sought power to supply the Wrexham company:

Held, however, that they had no *locus standi*.

The territories of the petitioning companies, incorporated by special Acts passed in 1869 and 1870, lay between the limits, on the one hand of the Wrexham water company, and on the other of the promoters. The petitioners represented that the Wrexham company could conveniently be supplied from their works, and objected to the powers of agreement for a similar purpose taken by the promoters in their bill.

The *locus standi* of the petitioners was objected to, because (1) the bill did not seek power to supply the district of the petitioners, or either of them, or to enter into competition with them; (2) no lands or property, rights or easements, of theirs were taken; (3) they had no sufficient interest according to practice.

Martin (Parliamentary Agent, for petitioners): The bill virtually seeks an extension of the limits of the promoters across the whole width of our territory, two and a half miles at the narrowest point. The power to supply the Wrexham company in bulk, if granted, will be nugatory without supplemental powers; but it will be sufficient to

give the promoters a *locus standi* next year against any similar proposal by either of the petitioning companies, though these actually adjoin the Wrexham territory. There is no precedent for a company seeking thus to stretch its hand across another's district.

Mr. RICKARDS: Suppose you appear and throw out this bill, you cannot compel the Wrexham company to take water from your companies?

Martin: No; but we say that the promoters in asking for power to supply water in bulk to Wrexham ought to come with a complete scheme.

Mr. RICKARDS: How are you entitled to say that? You allege that you can supply Wrexham with water, as well as the promoters, or better. Is that a ground of *locus standi*?

Martin: If this bill passes behind our backs, next year the promoters will oppose the grant of similar powers to us, saying they have a *quasi*-interest in the district.

Wyatt (Parliamentary Agent, in reply): Because their district lies between Wrexham and ours it does not follow that we shall invade or cross their territory. They neither show that we shall supply water in their district, nor interfere with their works. As to Wrexham, mere proximity gives them no right of exclusive supply.

Locus standi Disallowed.

Agent for Petitioners, *Martin*.

Agents for Bill, *Wyatt & Hoskins*.

LONDON AND NORTH WESTERN RAILWAY BILL.

13th March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of the FESTINIOG RAILWAY COMPANY.

Railway—Two-foot Gauge—Slate Traffic—Circular Tours—Competition—Lines in different directions.

Two short lines were proposed by the North Western, upon a 2-foot gauge and running through a district in North Wales, already served by the Festiniog railway, whose gauge was similar, and whose traffic was chiefly confined to slates. Against a petition presented by the Festiniog company on the ground of competition, it was urged that the new lines were projected not only to secure for the North Western a portion of the slate traffic, which must otherwise go to its destination by a circuitous route, but for the purpose of further opening up the district to tourists: *Held*, that the Festiniog company had no *locus standi*.

This was an omnibus bill, which proposed (*inter alia*) the construction of two short lines—the

Bettws and Festiniog railway (No. 1), about twelve miles long, from the North Western station at Bettws-y-Coed to the turnpike road leading from that place to Festiniog; and the Bettws and Festiniog railway (No. 2), about a mile long, extending from No. 1 line to the Rhiw Bach tramway, in Merionethshire. Both lines would be on the 2-feet gauge, which was that of the private tramways and inclines connected with the slate quarries.

The petitioners were the owners of the Festiniog railway (also constructed upon a 2-feet gauge) running from Duffws and Rhiwbrydir to Portmadoc, and they opposed the bill on the ground of competition, urging that five-sixths of the traffic on their line consisted of slates carried from the neighbouring quarries to or in the direction of Portmadoc, and that the proposed lines were designed for the sole purpose of diverting this traffic from the petitioners' railway.

The *locus standi* of the petitioners was objected to, because (1) the only ground of objection raised in the petition to the construction of the proposed railways is that of competition; but the alleged competition, even if well founded, which the promoters deny, is not of such a character as entitles the petitioners to be heard; (2) no other ground of objection is alleged entitling them to a hearing according to practice.

Michael (for petitioners): The only traffic of the district arises from the slate quarries. Between Bettws and Festiniog there is but one village, Dolwyddelan, with only 150 inhabitants. All the traffic, therefore, which the proposed lines could possibly get would be slate traffic abstracted from our railway. Of the two lines, No. 1 terminates about 250 feet above ours, at a point to which slates are carried to a kind of level platform from the neighbouring quarries; while No. 2 starts from the Rhiw Bach tramway (which also joins our line) and ends in the heart of the slate quarries, at a road about 300 feet above our line.

Merewether, Q.C. (for promoters): We do not propose this line solely with a view to obtain a slate traffic for our system, or to pick up passengers between Festiniog and Bettws. At present a passenger arriving at Bettws-y-Coed has to go by road to Festiniog, and the proposed line would fill up the link between Bettws and Festiniog, and so enable us to issue tickets for circular tours through Wales *vid* Bettws, Festiniog, Carnarvon, and Bangor. We shall bring passengers from Manchester and other districts into this part of Wales, and so really bring traffic to the Festiniog line, because we join the tramway which runs into that line at a short distance from the Festiniog terminus. As to the slate traffic, if persons at Rhyl or Chester want slates from Festiniog, they must now go to Portmadoc and thence by the circuitous route of the Cambrian system. Why should not these slates go by the North Western, upon the line now proposed?

Without hearing *Merewether* further,

The COURT Disallowed the *locus standi*.

Agents for Bill, *Sherrwood & Co.*

Agents for Petitioners, *Symes, Sandilands, & Humphry.*

METROPOLITAN RAILWAY BILL.

13th March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of (1) the METROPOLITAN BOARD OF WORKS.

Underground Railway—Ventilating Shafts into Roadway above—Interference with Street Traffic—Vestry—Metropolitan Board of Works—Right of, to appear apart from Vestry—25 & 26 Vic. c. 102 (Metropolis Local Management)—Tramway Act, 1870—Authorities, Local and Central.

The Metropolitan railway company proposed, by agreement with the vestry of St. Pancras, to make ventilating shafts opening into the Euston Road and other points, with balustrades for the protection of such shafts. A petition against the bill was presented by the vestry, whose *locus standi* was not questioned. The Metropolitan board also petitioned, on the ground that, though the roadway was vested in the local authority, they represented the interests of the outside public using the roadway, and that these interests might be prejudiced were the vestry recognised as the only body entitled to appear. The petitioners also alleged that under various provisions in their existing Acts they exercised control over the vestries, and that if the bill passed this control might be interfered with:

Held, that the *locus standi* of the Metropolitan board must be allowed.

Clause 4 of the bill empowered the promoters, in the construction of their works, to "make such openings or ventilating shafts in the Euston Road, and at such spots between Gower Street and Gray's Inn Lane as shall be agreed upon between the company and the vestry of St. Pancras, or other the local authority having control over the said road;" and also to erect on the surface of the road balustrades or other things for the purpose of the said shafts, or connected therewith; and the company were further empowered, for the purpose of these shafts, "to interfere with and divert all sewers, drains, gas and water-mains, and pipes, telegraph wires and other works, which may impede the construction and use of the said shafts."

The petitioners alleged that the proposed openings and ventilating shafts were altogether undefined by the bill, but would probably have the effect of dividing the Euston Road into two parts for considerable distances, thereby reducing the width of one of the main and most crowded thoroughfares of the metropolis; and they urged that such works should not be executed without their sanction.

The *locus standi* of the Metropolitan board was

objected to, because (1), though the petition objected to the power taken to make ventilating shafts in the Euston Road, (2) the first eight paragraphs neither affirmed nor implied that the Euston Road was vested in the petitioners or under their control; (3) the 9th vaguely stated that the petitioners would be injuriously affected by the bill, and the 11th that the shafts might interfere with the sewers vested in the petitioners: what those sewers were, or whether there were any belonging to the petitioners in that part of the Euston Road, was not stated; certainly there were none which these shafts could affect; (4) the remainder of the petition was an argument in favour of the interference of the petitioners in all works affecting the streets of the metropolis; (5) the vestry of St. Pancras had the superintendence and control and the duty of maintaining that part of Euston Road; and that two sets of petitioners should be heard, concerning the dealing with a highway—one justly claiming the property and right of control, and the other not claiming any such rights, but only setting up the expediency of their having superintendence and control—would lead to extreme inconvenience; (6) the petitioners had no right to be heard against the bill.

Cripps, Q.C. (for petitioners): Under Clause 4 the promoters and the St. Pancras vestry (in whom is vested the repair of the Euston Road) may do almost anything they choose to agree upon, and no other parties can raise any objection. For example, the clause would authorise a nuisance or obstruction in the Euston Road which otherwise would be indictable by any individual. S. O. 134 gives the Referees a discretion to allow the Metropolitan board to appear in cases where they allege that the inhabitants are injuriously affected; and last session the board were heard against the abandonment, by this very company, of part of an authorised line, though the *locus in quo* was within the jurisdiction of the corporation of London. (*Metropolitan Railway Bill*, 1870, 2 Cliff. & Steph. 22.) Our contention there was, that the local authorities are not the only parties interested in the traffic of the metropolis, and that as the bill affected more or less the travelling public throughout the whole of the metropolis, we had a right to appear, even though the corporation of London were also represented. The claim was admitted and it is no less strong in this case. The Metropolitan board are charged with the general interests of the metropolis, though it may very well happen that other public bodies may also have an interest in the same matter. It is easy to imagine instances in which the interference of the Metropolitan board might be essential. The particular parish may make a very good bargain for itself with the company, while by such an arrangement the outside public using the road may be excessively aggrieved. In the absence of plans we do not know exactly what is proposed; but if these shafts are made in the centre of the road they will narrow it for purposes of traffic, and if made close to the line of houses, that will interfere with our jurisdiction under section 75 of 25 & 26 Vict. c. 102 (*Metropolis Local Management Acts Amendment Act*), which enacts that, without our consent, no structure shall in such cases be erected. Again, no ventilating shaft could be put up without closing the street for

some time, and section 8 says it shall only be lawful for the vestry to close a street within their parish or district provided they obtain the sanction of the Metropolitan board. This bill, however, would enable the vestry and the company to dispense with such sanction, though we might think that proper accommodation was not made for the public during the stoppage. Section 100 provides that vestries must have the sanction of the Metropolitan board before they exercise the power to borrow money for the purpose of street improvement. This section shows not only our general control over the vestries, but the recognition, by the Legislature, of the principle that there exist two authorities having jurisdiction in these matters—one the local authority, the other the central authority, representing the general public. This is further shown by section 98 of the Act just cited, which gives the Metropolitan board jurisdiction with reference to the width of streets; and by the Tramways Act 1870, which provides that both the vestries and the Metropolitan board must be consenting parties, however beneficial to the particular vestry the proposed tramway may be. As to the objection that two sets of petitioners cannot be heard, there is no reason why both should not appear if two different interests are at stake. That is the case here, for there is the interest of the parish, charged with repairing this road, and the interest of the public, who have the right of using it. In the case of the *Metropolitan District Railway* last session, power was sought to construct ventilating shafts in Victoria Street, and our *locus standi* against that bill was not objected to. There are no cases in which the *locus standi* of the Metropolitan board has been disallowed.

Round (for promoters): In the case of the *Metropolitan District Bill*, the works proposed were under the street made by the Metropolitan board themselves. In the *Metropolitan Railway Bill*, 1870, the Whitechapel district board petitioned as well as the Metropolitan board, but the claim of the former body was not insisted on, and the question was whether, one of those bodies having dropped out of the running, the other should not be heard. The proposed abandonment of part of an authorised line was a question which obviously interested all classes of inhabitants, whether in the city or not; and the same principle governs the provisions quoted from the Tramway Acts, where the free circulation of traffic, in which all classes have a common interest, is in question. If there are no cases in which the *locus standi* of the Metropolitan board has been disallowed, the reason is that the issue now to be decided has never before been distinctly raised. Here the vestry of St. Pancras will appear against the bill. It is admitted that the roadway is vested in them, and that they are the parties to object to a nuisance, if any such be created. No question is raised as to the diversion of sewers; the objections of the Metropolitan board are confined to the mere apprehension of injury. The railway is finished. What is wanted is a mere opening of some kind, from the roof of the railway into the outer air, for the purpose of producing a free current. That is not an object contemplated by the sections of the *Metropolis Local Management Act* cited.

Cripps: You are empowered to erect on the surface of the roads balustrades over the shafts.

Round: The soil being in the vestry, they are the parties to appear. The Metropolitan board have certain rights of interference in the laying out of new streets, but that is not the case here. As to the stoppage of the street, there is only an apprehension of such a result, and that forms too remote a ground of *locus standi*. The fair presumption is that the vestry of St. Pancras will sufficiently protect the interests of the public, and unless you are satisfied that those interests will not otherwise be adequately protected, the petitioners should be excluded. This is not a case like a tramway, or a railway abandonment, affecting all classes of inhabitants in the metropolis. It is entirely a local matter, and the public interests will be sufficiently protected by means of the local authority.

The CHAIRMAN: The *locus standi* of the Metropolitan Board of Works is *Allowed*.

Agent for Metropolitan Board, *Shrubsole*.

Petitions of (2) LONDON AND SOUTH WESTERN RAILWAY COMPANY; (3) GREAT NORTHERN RAILWAY COMPANY.

Railway Companies—Statutory Agreements between—Alleged Breach of—Advantages Withheld—Competitive Traffic—Restriction on—Running Powers—Rights arising under—Proposed Grant of—Consequential Interference with Traffic of—Company possessing such Powers—Public Safety.

By a statutory agreement the Chatham railway company gave to the South Western company running powers over a part of their system to the Ludgate station, and engaged, "so far as from time to time they had the power, to give to the South Western company the benefit of any arrangements between them and the Metropolitan company," so that South Western traffic might be interchanged at Ludgate "or at any station north of it." The Metropolitan company now promoted a bill to confirm a scheduled agreement with the Chatham company whereby, for certain considerations, the latter company undertook to run 80 trains a day to Moorgate Street station on the Metropolitan system, but bound themselves not to convey to Moorgate Street traffic competing with that of the Metropolitan company, including South Western traffic from places beyond Hammersmith:

Held, that, for the purposes of *locus standi*, the bill must be regarded as one promoted by both companies, and that the condition embodied therein, assented to by the Chatham company, and restrictive of South Western traffic, was a *prima facie* breach of the agree-

ment between the South Western and Chatham companies, entitling the former to be heard against the bill.

Against the same bill the Great Northern company petitioned on the ground that, by a statutory agreement, they had acquired a right to use in perpetuity parts of the Metropolitan railway, over which it was now proposed that the Chatham company should have running powers, and that, as the Metropolitan line was already crowded with traffic, the additional 80 trains of the Chatham company would endanger the public safety, interfere with the traffic of the petitioners, and deprive them of the full benefit of their agreement with the Metropolitan company. It was contended, on the other hand, that the rights of the petitioners under this agreement could be enforced at law, that those rights were not exclusive, and that the possession of running powers does not entitle a railway company to oppose the grant of similar powers to other companies:

Held, that the *locus standi* of the Great Northern company must be disallowed.

The bill was one to confirm an agreement between the Metropolitan and the Chatham and Dover companies, giving the latter company running powers over the Metropolitan line between the intended Snow Hill junction and Moorgate Street, with the right to the use of the Aldersgate Street station and staff. Paragraph 7 of the agreement declared that the Chatham and Dover company should "not book or convey traffic competitive with the Metropolitan company, nor convey the local traffic of that company" without their consent; the operation of the clause being "confined to traffic of the Metropolitan company's existing line proper, the traffic of the Hammersmith and City line, and the traffic of places on the London and South Western railway beyond Hammersmith." The Chatham company bound themselves to run not less than 80 trains daily between Ludgate Hill and Moorgate Street; and the Metropolitan company engaged to provide proper accommodation for this additional traffic, so far as was consistent with the use of their line by other companies.

The South Western company alleged in their petition, that in consideration of sums exceeding £300,000 paid to or for the benefit of the Chatham company, they, the petitioners, were entitled to run over and use in perpetuity portions of the Chatham company's railways lying between the South Western system and Ludgate, and were also entitled to run in perpetuity through the Ludgate station and to use the siding accommodation belonging to, and to be provided by, the Chatham company, north of that station; that under an agreement confirmed by an Act of 1865, the petitioners were entitled to participate and co-operate

with the Chatham company, in respect of any station which either company might propose to erect north of Ludgate Hill; that it was further agreed that the Chatham company, so far as they from time to time had the power, should give the petitioners the benefit of any arrangements between them and the Metropolitan company, so that traffic might be interchanged at Ludgate station, or at any new station north of it; that the conditions embodied in the bill were inconsistent with this agreement and the interests of the public, as well as of the petitioners, by preventing the interchange of traffic and through booking between the Kensington station and all the petitioners' stations beyond Hammersmith on the one hand, and Moorgate Street, or any other Metropolitan railway station referred to in the scheduled agreement.

The Great Northern company in their petition recited the clause in the agreement by which the Chatham company undertook to run (with some exceptions) not less than 80 trains daily to and from Moorgate Street, and stated that, under the powers of the Metropolitan Railway Act of 1862, they (the Great Northern) had in 1869 agreed with the Metropolitan company for the use of the two lines of railway between their junction with the Great Northern and the Moorgate Street station, and also of the two lines forming the junction of the Metropolitan with the Chatham railways; that the Metropolitan company bound themselves to provide at Moorgate Street all necessary accommodation and conveniences, the petitioners on the other hand binding themselves to use in perpetuity these lines of the Metropolitan company, and to pay a perpetual rent of £13,000; that these lines were already crowded with traffic, and if 80 additional trains a day were brought into Moorgate Street, the result would be to interfere seriously with the petitioners' traffic and endanger the public safety; that to sanction such additional traffic would be contrary to the intent and spirit of the agreement between the petitioners and the Metropolitan company, and would deprive the petitioners of the full benefit of this agreement, though they would continue bound to pay the rents and sums therein specified.

The *locus standi* of the South Western railway company was objected to, because (1) the petition, founded upon the agreement between the Metropolitan and the London Chatham and Dover railway companies, (2) suggested certain arrangements, and (3) complained of certain conditions imposed; but (4) these, which were the only allegations in the petition on which any claim to be heard could be based, were far too vague, even if founded in fact, to justify that claim; (5) they did not specify what parts of the agreement had the effect which the petitioners deprecated, and were all based upon the fallacy that the use accorded by the bill, on certain conditions, to the Chatham company by the Metropolitan railway, was a restriction of the rights of the petitioners; (6) it was not alleged that any property or rights possessed by the petitioners were directly or indirectly interfered with by the bill.

The *locus standi* of the Great Northern railway company was objected to, because (1—4) the rights of the petitioners with respect to the Metro-

politan railway were defined by agreement and by statute. Those rights were not in anywise interfered with by the bill, and could be enforced by legal remedies. On the other hand, the right of the petitioners to use the Metropolitan railway was not exclusive, or intended to be so; (5) running powers over a railway gave to the companies in possession no right to be heard against the grant of similar powers to other companies, unless competition were involved, and no such question was raised here; (6) no rights or property of the petitioners were affected by the bill.

Clerk, Q.C. (for the South Western company): The bill must be regarded as one jointly promoted by the Metropolitan and the Chatham companies, the scheduled agreement being under the seal of both. If our traffic is to be treated as competitive, and is not to be forwarded by the Chatham company without the consent of the Metropolitan company, the effect would be to deprive us of advantages which we possess, because, starting from a point to the west, traffic may now go either by the City and Hammersmith, and so by the Metropolitan to Moorgate Street—or, on the other hand, it may come from Richmond or points to the west of Hammersmith by Kensington, and so be conveyed to Ludgate Hill, in competition with the Metropolitan. The stipulation in the scheduled agreement is a distinct breach of the arrangement between the South Western and Chatham companies in our Act of 1865, in consideration of which we paid so large a sum of money. We are therefore entitled to see that proper provisions are inserted in the bill, in order that our traffic may not be excluded, and that, as the agreement of 1865 provided, we should enjoy the advantages of any arrangements from time to time made between the Chatham and the Metropolitan companies.

Mr. RICKARDS: The Chatham company undertake not to book or convey traffic competitive with the Metropolitan company, and this sacrifice includes the South Western traffic. That is the price they pay for the benefit they get?

Clerk: But they pay the price out of our pockets.

The CHAIRMAN: They acquire a privilege; they surrender another in return; and your complaint is that they sacrifice you?

Clerk: Yes.

Denison, Q.C. (for the Great Northern company): Any railway company may give running powers to another company, but, without a special Act, such powers are very limited and imperfect. A special Act became necessary to sanction the agreement between the promoters and ourselves in 1862. The agreement now contemplated also requires the authority of a special Act, so that, on both sides, we go beyond general legislation. By a payment of £13,000 a year, we acquired a statutory right to use the line for our traffic jointly with that of the Metropolitan, subject to the conditions under which the line was then worked. But it is now proposed, not merely to allow the trains of another company to come upon the line, as they might under the general law, but actually to compel that company to run the enormous number of 80 trains a day. This agreement will place us in a worse position than we are at present, and our traffic will be seriously

obstructed. In 1864, when the Metropolitan promoted a bill enabling them to make agreements with the Midland company, the Great Northern were not only allowed a *locus standi*, but the Committee required that no Midland traffic should be sent along the Metropolitan lines until they were doubled from King's Cross southward. It is objected that no competition arises here; but there is no magic in the word competition. The scheduled agreement really goes much further than competition, because it attempts to run other trains upon a line partly our own, to the obstruction, and, perhaps, the exclusion of our trains.

Round (in reply): There is a distinct provision in the agreement that the running of the 80 trains is to be "so far as is consistent with the use of the line by other companies." Moreover, at Moorgate Street station, the Great Northern enjoy separate accommodation, so that no inconvenience can arise to them there; and the Court can measure the interference with traffic which the addition of 80 trains a day will cause on a line upon which 560 trains a day are now running. As to the South Western company, their grievance is not against the Metropolitan, but against the Chatham company, who will run into Moorgate Street at fixed tolls and rates, but are not going to buy any particular privilege from us. Even if they were, the South Western company would have no *locus standi* against a bill promoted by us, and not by the Chatham company. The petition does not allege that we have broken any agreement, or done anything entitling the South Western company to be here.

Mr. RICKARDS: Though this is a Metropolitan railway bill, it carries into effect an agreement between the Metropolitan and the Chatham companies?

Round: We say very reasonably to the Chatham company—"You must not make use of this line in order to compete with our local traffic, or bring South Western traffic into Moorgate Street under the cover of your wing." Besides, Moorgate Street lies east of Ludgate, and does not answer the description of "any new station north of Ludgate Hill" contained in the agreement of 1865. That agreement did not mean to prevent the Chatham company from coming to the Metropolitan and making their own arrangements with us; and as the South Western traffic may still be interchanged at Ludgate, the petitioners are really in no worse position than they were before.

The CHAIRMAN: They do not complain that they will be placed in a worse position, but that, having an agreement to share in any benefit which the Chatham company may obtain from the Metropolitan company, the Chatham company are now obtaining a benefit which they are not sharing with the petitioners.

The COURT (after deliberation): The *locus standi* of the London and South Western company is *Allowed*. The *locus standi* of the Great Northern company is *Disallowed*.

Agents for Bill, *Dyson & Co.*

Agent for the London and South Western railway company, *Bircham*.

Agents for the Great Northern railway company, *Johnson, Farquhar, & Leach*.

MIDLAND RAILWAY BILL.

13th March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petitions of (1) GEORGE LANE FOX; (2) INHABITANTS OF CARLTON.

Railway—Level Crossing—Stoppage of Ancient Highway—Owner of Land abutting on—Land "Injurious Affected"—Changed from Building to Agricultural—Inhabitants, Petition of—Representation—Public Meeting—Absence of Allegation as to, in Petition—Substituted Road—Increased Distance—Liability to Turnpike—S. O. 134.

A railway crossed an ancient highway on the level near to Skipton station. In 1847 a deviation road was made by the railway company, but the distance by that route between Carlton and Skipton was half a mile further than by the highway, which, therefore, continued to be used by the inhabitants. The railway company now promoted an omnibus bill which, without any allegation of necessity or inconvenience to their traffic, proposed to stop the level crossing, the effect of this proposal being to convert the highway on either side of the crossing into a *cul de sac*. A landowner, whose estate abutted on the highway, petitioned against the bill, on the ground of the injury he would thereby sustain in his use of the highway, but especially because his land, being deprived of its frontage to a public road, would no longer be of value as building land:

Held, that by such deterioration in value, the land was not affected so as to confer a *locus standi*, and that the petitioner had not the right to appear as an individual inhabitant.

Another petition was presented by 334 inhabitants of Carlton, who urged that public inconvenience would result from the closing of the highway, and in particular that vehicles passing between Carlton and Skipton must then follow the deviation road into a turnpike road, on which a toll-gate might be so placed by the trustees as to intercept this traffic. The road to be closed was within the district of the local board of Skipton, who had been served with notice but did not appear, nor was there any petition from inhabitants of Skipton. At Carlton, which was a mile and a half distant from the level crossing, there was no local board, but

public meeting had been held, and had presented the petition, though this fact was distinctly alleged :

that the petitioners had a *locus standi*.

The bill was an omnibus bill, and by section 14 it directed to "stop up and discontinue as a public highway so much of the public highway leading from Skipton to Carlton which crosses the common-roads and Bradford railway on the level of the station, as lies between the boundaries of the company's property there."

The petitioner, Mr. Lane Fox, alleged that he was the owner of a valuable building estate adjoining the Midland railway station at Skipton, and that his estate was situated at Carlton; that his Skipton estate was on the high road in question, which would, if the bill passed, be severed and destroyed as a means of through communication; that the bill proposed to stop up the road, without providing any other means of crossing their property; that the effect of such a measure would be to inconvenience the population both on and near Skipton, deteriorating the value of property lying between the two towns, and frontage on the road; that, in particular, the value of the petitioner's Skipton estate for the purposes would be wholly destroyed by stoppage, and would be reduced to a mere residual value; that all property at and near Skipton, and especially the petitioner's estate there, would also be greatly reduced in value by the stoppage of the road; that the Midland company's station was a very important one, likely to lead to further development, and that if the bill passed, the company, after destroying the value of the road near their station for building purposes, would be able to stop the public road, would thereby be able to sell the land at a reduced price, the further land they had; that the bill alleged no public necessity for stoppage, and contained no provision for compensating the petitioner, or any other person for the injury done to him, and that in no adequate compensation in money could be made to the landowners or the public for the injury they would suffer if the bill became law.

The petitioning inhabitants of the township of Carlton (334 in number) alleged that they represented substantially the whole of the township of Carlton, together with the interests of the inhabitants of other places to the south of Carlton, with regard to the proposed stoppage and discontinuance of the highway; that it was an ancient highway which had existed from time immemorial, and, until 1847, was the only road whereby access from Carlton to the south was had to the town of Carlton; that since the making of the railway, the petitioners and the public continued to use the highway as the ordinary road between Carlton and Skipton, crossing the railway through gates provided by the company, and that no accident or injury resulted from such user; that in 1847 the Midland railway company made and opened a new line commencing at a point in this ancient highway about 200 yards to the south of the Skipton and level crossing, which new road, after

being carried over the railway by a bridge, joined a turnpike road, which gave access to Skipton; that if, as the bill proposed, the ancient highway were closed at the level crossing, that portion of it situated between the crossing and the deviation road would become a *cul de sac*, and the present free access to and from Skipton would be stopped, and the value of the land abutting on and adjacent to such highway, in which land some of the petitioners were interested as owners, lessees, or occupiers, would be largely decreased; that to persons going from Carlton to the Skipton station, the route by the deviation road was half a mile longer than by the highway to be stopped up, and moreover the trustees of the turnpike road might remove a toll-gate, and place it so as to intercept the traffic from Carlton to Skipton; and that such toll would be a heavy burden on the petitioners and the public, from which, if the ancient highway were closed, there would be no escape.

[It was stated in the course of argument that Carlton was distant between a mile and a half and two miles from the level crossing, the township boundary being half a mile distant; that there was no local board at Carlton, and that the piece of road which would be closed under the bill, was situated within the district of the local board of Skipton.]

The *locus standi* of Mr. G. L. Fox was objected to, because (1) the bill contains no provision for taking or using any lands, &c., of the petitioner; (2) he has not the control or management of the public road from Carlton to Skipton; (3) he has no such estate, right, or interest in this road as entitles him to be heard; (4) his allegations that a portion of his estate lies with a frontage to and abuts on this public road, do not entitle him to be heard; (5) he has no *locus standi* according to practice.

The *locus standi* of inhabitants of Carlton was objected to on similar grounds; but it was also objected that their petition was not agreed to at any meeting of the inhabitants of the district affected by the proposed stopping up of the highway, and that the petitioners did not so represent those inhabitants as to entitle them, according to practice, to be heard against the bill.

Pember (for G. Lane Fox): The petitioner's case is, (1) that a distinct legal right of his, namely, the right to use this highway—a right he possesses, it is true, with the rest of the public—is taken away by the bill; and (2) that a special damage will be suffered by him under the bill. It will, no doubt, be contended, that this is only a case in which property is injuriously affected, and that accordingly the petitioner cannot be heard. But reported cases of this nature are to be distinguished from this case. In the *Crystal Palace and South London Bill*; *Petition of Trustees of Loughborough Road Chapel* (Cliff. & Steph. 45), no right of the petitioners was interfered with. Here Mr. Fox has the right to use the highway. The same remark applies to the *Fareham and Netley* case (Smeth. 100). So in the *Clyde Navigation Bill* (Cliff. & Steph. 39), the petitioners had, under the agreement, only a right to "a road," and not the particular road to be diverted. Both there and in the *Edinburgh Station* case (Smeth. 108), where the *locus standi*

was allowed, the damage complained of by the petitioners was more remote than it is here.

The CHAIRMAN: This is a level crossing. Who repair it—the trustees of the road or the railway company?

Venables, Q.C. (for promoters): The railway company. Nothing is stopped except the level crossing.

Pember: You will cut a deep trench in the road, and stop my client from using it, exactly at the point where his property lies. As to the argument that the petitioner is represented by the trustees, I say he is really not so represented; because, even if the trustees themselves should attempt to stop the road, he would be heard against them.

Mr. RICKARDS: The law provides a measure by which trustees can stop a road?

Pember: That is under the Highway Act of 1835, sections 84 and 85, which prescribe the method of stopping a road, whether by trustees, landowners, or inhabitants of a district, to be by resolution in the vestry. After the vestry has passed such a resolution two justices must certify that it is convenient that the road should be stopped, and that the road is not necessary; and from their decision any aggrieved person may appeal at the next Quarter Sessions. If, therefore, the railway company, the road trustees, or any private person had proceeded under the Highway Act, we should have been heard against such a proposal.

Mr. RICKARDS: When a portion of the highway is made into a level crossing, what is the legal status of the piece of road so converted?

Pember: No doubt, under the General Railway Acts, the railway company are bound to maintain it in repair, and to keep it open for the use of the public, subject to regulations to ensure the working and safety of the traffic.

Mr. RICKARDS: Are the road trustees divested of any authority over it?

Pember: The trustees have no control over this road. The inhabitants of the district generally are bound to repair, and if they neglected this duty, an action against them would lie.

Horace Lloyd, Q.C. (for inhabitants of Carlton): It has been held that the liability to repair is still upon inhabitants; that, though there may be a secondary liability, still, in certain cases, the liability of the inhabitants may again revive.

Mr. RICKARDS: That is to say, as between the inhabitants and the railway company, the railway company are liable; but as between the inhabitants and the public, the inhabitants may still be liable?

Lloyd: Yes.

Pember: If this clause passes behind our backs it will open the door to parties to come to Parliament for Acts to stop up roads, thereby shutting out persons interested from all the machinery at present afforded them at law for investigating the merits of the case.

Mr. RICKARDS: According to that argument, any one of the public would have an equal right to appear against this bill?

Pember: In the same way it might be objected that against a line from London to York every landowner would have a right to be heard. This is the case of a prominent landowner in the

district, who feels bound to come forward in the public interest, his own rights being specially and largely interfered with.

Horace Lloyd (for inhabitants of Carlton): We claim a *locus standi* under S. O. 134, and ask to be heard against the same part of the bill as that objected to by Mr. Fox. "An injurious affecting" of inhabitants is not to be confined to cases covered by the Acts giving compensation; but we must consider whether the interest and convenience of the district are likely to suffer prejudice from what is proposed. Surely the inhabitants of a district are injuriously affected if you stop up one of the main highways of communication in that district, compel them to take a circuitous route, and subject them to the risk of being intercepted on the new route by a turnpike gate, moved so as to catch such traffic. As there is no local board at Carlton the petitioners are not here competing with any local authority, and their interest is clear, for they are continually using the road, which is one of their main thoroughfares. As to the objection that no public meeting has been held, there has, in fact, been such a meeting, though it is not stated in the petition. But a public meeting is not essential. All that need be shown is, that the petitioners fairly represent the inhabitants, which is the case here; the fact that a public meeting was called and was fully attended is only part of the proof of adequate representation. According to the *Bray Improvement* case (Smeth. 174) the fact of a public meeting having been called and a resolution passed, is by no means conclusive, because the meeting may still not properly represent the inhabitants of the district. (*Liverpool Tramways* (Cliff. & Steph. 142); and *Cobham Railway Bills* (2 Cliff. & Steph. 57.)) If necessary I will call evidence to prove that the petitioners sufficiently represent the district.

The CHAIRMAN: We do not want evidence.

Venables, Q.C. (in reply): As to the liability to repair roads which are crossed by railways, section 46 of the Railways Clauses Consolidation Act, 1845, provides for taking railways over a road, and enacts that the "bridge with the immediate approaches and all other necessary works connected therewith shall be executed, and at all times thereafter maintained" by the company. In section 47, which relates to level crossings, there is no provision of the kind. It merely says that "The company shall erect and at all times maintain good and sufficient gates across such road." It follows, therefore, that the persons before liable to repair the road will remain liable. In the *North Western* case (Smeth. 115), though it was proposed to stop up the whole of Hotham Street, and though the petitioners' property abutted upon the street, their *locus standi* was disallowed. Mr. Fox's land does not abut on the part of the road to be stopped up. As to the petition of the inhabitants of Carlton, neither the local board nor the inhabitants of Skipton object. There is no allegation that a public meeting was called, and there is no proof that the petitioners represent the inhabitants. They may be all agricultural labourers, except Mr. Fox. There is an existing road which increases the distance between Carlton and Skipton by 167 yards, and there is no allegation that any special inconvenience will be caused

to the petitioners by going that distance round. Under an agreement with Lord Thanet, who is a landowner in the district, a substituted road was made for the purpose of avoiding the level crossing. This road has been open for a long time, but as Lord Thanet did not insist upon the stopping up of the level crossing it has been let alone up to the present time. There is nothing in this case to distinguish it from those quoted, in which the *locus standi* was disallowed. Mr. Fox's grievance is, that his property is valuable for building sites because it has a frontage to this road, and that it will become less valuable when the frontage is taken away. That may be so, but the right of frontage to a road is not one of those rights which confer a *locus standi*. Again, the proper persons to protect a road are the authorities of that road, in this case the local board of Skipton; they do not interfere, though they have been served with notice of the bill. In the *Cobham Railway Bill* last year one of the Referees pointed out (2 Cliff. & Steph. 59) that, according to *May's Practice*, persons much more affected than the persons signing the petition there—namely, landowners whose property is injuriously affected—have no right to a *locus standi* unless their property is actually touched. That is the case here; Mr. Fox has no right to a *locus standi* unless his property is touched. We stop up the level crossing, but not the rest of the highway, so that he will still have a frontage to the highway, though it will only lead in one direction instead of two. A *locus standi* has never before been allowed in such a case. The inhabitants of Carlton are really Mr. Fox, again, in another form. If they have the right to appear, living at least a mile and a half off, why should not people further down the road possess the same right? There must be certain authorities having the control of the highways at Carlton, and they must have been served with notice. They are the proper persons to protect the road, and must have deliberately abstained from appearing.

The CHAIRMAN (after consultation): The *locus standi* of George Lane Fox is *Disallowed*. The *locus standi* of the inhabitants of Carlton is *Allowed*.

Agents for Bill, *Sherwood & Co.*

Agents for G. L. Fox, *Dorington & Co.*

Agents for inhabitants of Carlton, *Fearon & Clabon.*

GREAT WESTERN RAILWAY (STEAM-VESSLS) BILL.

17th March, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.)

Petitions of (1) STEAM-SHIP OWNERS' ASSOCIATION; (2) IRISH STEAM SHIP ASSOCIATION; (3) LONDON AND NORTH WESTERN RAILWAY COMPANY.

Railway Company—Steam-boat Powers—Steam-ship Associations—General Allegations of Competition—Practice—Competition between Specific Ports—

Railway Company already possessing Steam-boat Powers—Competition with—Agreement—"Existing Route"—Meaning of.

A steam-boat association cannot oppose the grant of steam-boat powers to a railway company without specific allegations that competition will arise between the company and some members of the association under the powers proposed. In the case, therefore, of a bill empowering the Great Western railway company to run steam-boats to certain points of the French coast, a general allegation by steam-ship associations that their members traded with "the Continent," was held to be insufficient; and the Court limited the *locus standi* of the petitioners to such of the proposed lines of steamers as they had specifically alleged would compete with their own vessels.

By the same bill the Great Western company sought authority to run steamers between Birkenhead and Liverpool on the one hand, and Kingstown and Dublin on the other. These proposals were objected to on the ground of competition by the North Western company, who had statutory powers to run steamers between Holyhead and Kingstown. They and the Great Western company had, in 1863, entered into an agreement by which mutual facilities were given, and the Great Western company were allowed to carry traffic to Ireland "by any other existing route than Holyhead." It was argued for the North Western company that "existing route" meant only a steam-boat line then established; and by the Great Western company that the words referred to any route then possible, between a Great Western terminus at an English port and the opposite coast of Ireland:

Held, that the North Western company were entitled to the limited *locus standi* for which they applied.

The bill was one for "empowering the Great Western railway company to provide and use steam and other vessels;" and for other purposes.

Clause 4 was as follows:—"The company may build, purchase, hire, provide, charter, employ, and maintain steam and other vessels of any or every description, and may navigate, work and use the same, and may therein and thereby convey and carry passengers, animals, minerals, goods, merchandize, and things of every description between the following ports and places, namely, Weymouth and Portland, or either of them, on the one hand, and the Channel Islands and the

ports of Cherbourg and St. Malo, or any or either of them, on the other hand; Milford Haven, and any other port or place in Pembroke-shire at which there is from time to time a station of the company, or where they carry on traffic, on the one hand, and the ports or places of Waterford, Cork, Wexford and Greenore, or any or either of them, on the other hand; and Birkenhead and Liverpool, or any or either of them, on the one hand, and the ports or places of Kingstown and Dublin, or either of them, on the other hand."

The Steam-ship Owners' Association alleged that they represented "owners of steam-ships and other vessels engaged in carrying on communication between England and Ireland, and England and the Continent, and on several other lines, including Dublin and the Mersey, Cork and Bristol, Cork and Milford, and Waterford and Bristol;" and they claimed to be heard on the ground of competition.

The Irish Steam-ship Association made the same claim, alleging that they traded between Dublin and the Mersey, Cork and Bristol, and Cork and Milford, and also between Waterford and Bristol.

The London and North Western railway company alleged (*inter alia*) that their system was brought into connection with the lines of railway which centred at Dublin and Kingstown, by means of their Chester and Holyhead railway, and the system of steam-vessel communication established under the authority of Parliament between Holyhead and Kingstown and Dublin; and they claimed to be heard on the ground of competition.

The *locus standi* of the Steam-ship Owners' Association was objected to, because (1) their allegation as to a contemplated monopoly to their prejudice, even if such allegation were well founded, was not such as, according to practice, entitled them to be heard; (2) the petition did not allege or disclose any sufficient competition, or interference with competition, according to practice; (3) the bill did not authorize interference with any property, rights, powers, or privileges of the petitioners; (4) there was no allegation upon which, according to practice, they could be heard.

The *locus standi* of the Irish Steam-ship Association was objected to on similar grounds.

The *locus standi* of the London and North Western railway company was objected to, because (1) the bill contained no provision expressly interfering with any property, right, power, or privilege of the petitioners, statutory or otherwise; (2) they had no established system or line of communication from any of the places between which it was proposed by the bill the promoters should be empowered to run steam and other vessels; (3) no such competition was alleged as, according to practice, entitled petitioners to a hearing.

(*Clerk, Q.C.* (for promoters): After the decision of the Referees last year upon the *London and North Western (Steam-vessels) Bill* (2 Cliff. & Steph. 65), we concede that a steam-boat association has a *locus standi* in a case where competition will actually exist between the railway company and the petitioners; but the *locus standi* should be limited to those portions of the bill only. We now propose to run steam-vessels between Wey-

mouth and Portland and France, and the petitioners do not allege that they have any service with which those steam-boats will compete. As to Dublin and the Mersey, competition will no doubt be created with the boats of the Irish Steam ship Association, and so far we concede their right to oppose our bill.

Mr. RICKARDS: The petitioners cannot go beyond their petition. Does it mention that between all the ports named in the bill the petitioners run steam-vessels?

Rodwell, Q.C. (for the steam-ship associations): No, nor in other cases where a general *locus standi* has been allowed to steam-ship owners was it alleged that the petitioners ran their vessels between the ports specified in the bill. It is enough if they are ready to do so. Their *locus standi* has never been narrowed down to actual traffic, conducted between particular points of coast. Thus, if a railway company run boats from Folkestone to Boulogne, and I carry traffic merely from Dover to Calais, I should have a right to be heard on the ground of competition. As Sir E. Peel said in 1847, how is the report required under the S. O. (steam-boat powers of railway companies), to be made by the Committee on the bill, unless opponents are allowed to raise these points?

Mr. RICKARDS: The bill takes power to run vessels between three sets of places, and your clients allege competition only as to two of them!

Rodwell: I admit that we do not allege specific competition between Weymouth and Portland, and Cherbourg and St. Malo.

Mr. RICKARDS: Then, if a *locus standi* were granted to you, could you enter into that case of competition, there being no allegation with respect to it in your petition?

Rodwell: Yes. In the case of the *Great Eastern (Steam-boats) Bill*, empowering the company to run steamers between Harwich and Rotterdam, it was urged that the steam ship owners had no boats running from Harwich to Rotterdam, and did not allege that they had, in answer to which the steam-ship owners said—"No; but we are carriers from London to Rotterdam;" and the *locus standi* of the steam-ship owners was allowed. Here we allege that we are carriers between England and the Continent; and if so, the promoters must compete with us if they carry goods between Weymouth and the Channel Islands, and Cherbourg and St. Malo.

Mr. RICKARDS: "The Continent" is a wide term. In the case you cited, Hamburg was a common terminus, there being two modes of reaching it. Even if a general *locus standi* were given you here, could you lay before the Committee anything with respect to this Weymouth and Portland case, your petitions being silent on the subject?

Rodwell: I should be entitled to show generally that we were carrying goods from England to the French Coast. In other cases where we have been admitted, the objections taken were *verbatim* those taken here, yet our general *locus standi* was allowed. (*London and North Western (Steam-vessels) Bill*, (2 Cliff. & Steph. 66); *Lancashire and Yorkshire &c., (Steam-boats) Bill* (ib. 59).) By an Act passed in 1866 the Great Western company were empowered to employ our vessels,

a pursuance of this statutory authority may as to run boats between Portland and Cherbourg; but the bill puts a stop to that arrangement made in our favour.

RICKARDS: Is that any more than a monetary power given to the Great Western any to contract with the steam-boat owners? Does not bind them to carry on traffic exclusively through the medium of the steam-ship company.

WELL: No; but till this bill is passed the steam-ship company cannot own the boats themselves.

RICKARDS: Do you say that the Act of 1863 is an estoppel against any future application of a railway company to Parliament for power to run steam-boats themselves?

WELL: No, I only say that they now have a definite plan of carrying traffic by means of our boats, between Portland and Cherbourg, which will supersede by the bill. I should urge the Committee that there was no necessity for the bill, because we could supply any of their traffic under the Act of 1863. From 1847 downwards, we have always been heard upon bills of this kind.

RICKARDS: The right of steam-boat companies to be heard rests upon the same foundation of competition as is recognized between railway companies?

WELL: Hardly, because under the S. O. a report must be made and special reasons given by the Committee when they allow a railway company to apply its capital to the acquiring of steam-vessels. How can the Committee decide whether it is expedient for the Great Western any to have these powers unless opposing objections are heard?

RICKARDS: In such cases steam-boat owners only claim to be heard on the grounds of direct competition. You could not claim for any steam-boat association whatever a right to oppose grant of powers to a railway company to run steam-boats between any two points whatever?

WELL: I should not contend that the Irish Steam-ship Association, for instance, were entitled to be heard against a bill to give a railway company power to trade to the Mediterranean.

RICKARDS: You say that if the steam-boat owners are not heard, the Committee on the bill cannot comply with the terms of the S. O., and that the reasons and facts upon which they give their opinion that the railway company should have the powers sought for. But a bill empowering a railway company to trade to the Mediterranean might be unopposed?

WELL: That would be an extreme case. Here we oppose the bill, and our association comprises all its members steam-ship owners who trade all the world.

MEREWETHER, Q.C. (for the London and North Western railway company): Our claim to oppose the bill arises from the fact that we possess a line of communication between Birkenhead and Holyhead, and thence to Kingstown; and against our opposition to that part of Clause 4 empowering the promoters to trade between Birkenhead and Liverpool, and Kingstown and London. The case of the *London and North Western (Steam-vessels) Bill* (2 Cliff. & Steph. 65),

where the *locus standi* of the Great Western company was allowed, supports our claim. In 1863, the Great Western company consented, as part of the price of their amalgamation with the West Midland company, to adopt certain articles of agreement by which mutual concessions were made as to the Irish traffic *via* Holyhead. Under the bill the Great Western company will retain as against us their rights of through booking, and other facilities by virtue of that agreement, while they seek the means of diverting traffic from our system and steamers by running steam-boats of their own.

Clerk, Q.C. (in reply): The question is whether such a fresh competition is created under the bill as, in the discretion of the Court, entitles the petitioners to be heard. It is notorious that the passage between Holyhead and Kingstown is a very short one, while the route proposed between Birkenhead or Liverpool and Kingstown or Dublin would be double the distance and take double the time. There is also this wide distinction between the case cited and that now to be decided: that under the agreement of 1863, we are already empowered "to carry traffic between competing places in England and Ireland by any other existing route than Holyhead," the only stipulation being that "the rates and fares by such other routes shall be fixed so as not to induce an unfair competition with the Holyhead route." We therefore have, under that agreement, a right to compete with the North Western, under certain conditions, between the Mersey and Dublin and Kingstown, there being then "an existing route" between those points, and we being empowered, under our Act of 1863 (section 95), to charter vessels to convey our goods from Birkenhead to Ireland. What difference can it make to the North Western whether we subsidise a vessel to carry those goods, or run steamers of our own? We are only proposing to make an already authorized competition more effective, and in such cases the Court does not grant a *locus standi*: some new competition must be created. In the *Lancashire and Yorkshire (Steam-boats) Bill* (2 Cliff. & Steph. 60), the *locus standi* of the Furness and Midland Railway companies was disallowed, and they petitioned on very much the same grounds as those put forward by the North Western company here.

The **CHAIRMAN:** What is the meaning of the words "existing route" in the agreement of 1863? Do they mean a line of steamers then established?

Merewether: I think so. The words refer to a line of steamers running in the Great Western interest between Milford and Wexford, Waterford and Dublin, and were intended not to prohibit them.

Clerk: We can now carry a ton of goods to Birkenhead, put it in a vessel there chartered by ourselves, and so send it to Dublin. That power is exercised in respect of Birkenhead traffic at the present moment. The only difference would be that we should send those goods more punctually when the steam-boat belonged to us than when it was chartered by us; so far as the quantity of goods and the rates charged are concerned, there will be no difference. "Existing route" means only any other route by land and sea between England and Ireland than *via* Holyhead, whether

the Mersey route, or the Southern route by Waterford and Cork.

The CHAIRMAN: If you take "existing route" to mean not a line of steamers already established, but the sea, the sea is open everywhere?

Clerk: I shall take the terms to mean the railway leading to the sea-shore in England and the sea route across to Ireland.

Mr. RICKARDS: The question is whether the term "existing route" does or does not estop the Great Western company from establishing any new route?

Clerk: The route between Holyhead and Greenore has been established since that time.

The CHAIRMAN: The question is whether the term "existing route" is confined to the sea, in which case it must mean a line of boats then in operation, or whether it means a route by the land to a point at which the Great Western company have a station, and their communication by sea across?

Clerk: It must be a sea route commencing at a point in connection with our railway system. Such a sea route was in existence in 1863, viz., the Mersey route. We were then joint owners of the Birkenhead line, and had a through route b. Birkenhead to Ireland at that time, being also empowered to charter steamers under the Act of 1866. With respect to the petition of the Steamship Owners' Associations, there is not a single word about continental traffic, and they have no right therefore to oppose that part of the bill empowering us to establish steam-boats between Weymouth and Portland and the ports of Cherbourg and St. Malo.

The CHAIRMAN: We need not trouble you on that point. The *locus standi* of the Steamship Owners' Association is *Allowed* against so much of the preamble and clauses as relates to the providing and working of steam and other vessels between the ports or places in England and Ireland specified in Clause 4. The *locus standi* of the Irish Steamship Association is *Allowed* against so much of the preamble and clauses as relates to the providing and working of steam and other vessels between ports or places in England and Ireland. The *locus standi* of the London and North Western railway company is *Allowed* against so much of the preamble and clauses as relates to the providing and working of steam and other vessels between Birkenhead and Liverpool, and Kingstown and Dublin.

Agents for Bill, *Sherwood & Co.*

Agents for Steamship Associations, *Bryden & Robinson.*

Agent for London and North Western railway company, *Blenkinsop.*

MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE, AND NORTH STAFFORDSHIRE RAILWAY COMPANIES' BILL.

17th March, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.)

Petition of THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Railway—Dissolution of existing Company—Vesting of Undertaking in Committee of two promoting Companies—Opposition by Third Company—Agreement—Running Powers—Mutual Facilities—Diversion of Traffic—Competition.

In 1864 an Act was passed incorporating a railway company, nominally independent, but with a capital really subscribed or guaranteed by the North Staffordshire and Sheffield companies. A bill was now promoted by those two companies to dissolve the original company, and vest the line in a joint committee of the two promoting companies, who were empowered to use the line as if formed part of their respective undertakings. In 1867 an agreement had been made between the North Western and the North Staffordshire companies, under the authority of an Act of the same year, in which running powers and mutual facilities were conceded by each company, the North Western being bound to run certain trains over the North Staffordshire system between specified points, and thereby becoming subject (as they alleged) to an onerous obligation. The North Western Company now petitioned against the bill on the ground that if it passed, traffic would be diverted from their system, competition would be created, and the terms or spirit of the agreement of 1867 would be violated:

Held, that the petitioners (who asked only for a clause reserving their rights under the agreement of 1867) were not entitled to a *locus standi*.

The Macclesfield, Bollington, and Marple railway was passed, nominally as an independent line, but the whole of its capital was subscribed by the Manchester, Sheffield, and Lincolnshire, and the North Staffordshire railway companies. The bill, which was promoted by those two companies, now sought to dissolve the Macclesfield, Bollington, and Marple railway company, and transfer its undertaking to the two promoting companies jointly. Clause 4 proposed that the undertaking should be vested in a joint committee of the two promoting companies, such committee being incorporated as a body corporate with perpetual succession, representing these two companies; and Clauses 7 and 14 empowered the promoters to severally or jointly use the Macclesfield line as fully as if it formed part of the undertaking of the two companies, on paying to the joint committee certain tolls (not exceeding the

maximum tolls authorised by the Macclesfield Act), and other payments for use of stations.

The petitioners alleged that the Macclesfield railway commenced by a junction with, and ran from the North Staffordshire railway at Macclesfield, to the Newton and Compstall branch railway of the Manchester and Sheffield company, and, in conjunction with other lines of the last named company, formed a second route between Macclesfield and Manchester, and might be used in competition with the line of the petitioners between those places; that the petitioners' railway joined the lines of the North Staffordshire company at several points, amongst others, at Colwich, Norton Bridge, and Macclesfield, and there was a direct route and train service, without change of carriage, by the lines of the petitioners and the North Staffordshire company, between London and Manchester; that by the petitioners' "New Works and Additional Powers Act, 1867," they acquired running and user powers over all or any parts of the lines from time to time belonging to the North Staffordshire company, like powers being conferred on that company over certain portions of the undertaking of the petitioners, and mutual facilities being afforded for the interchange of traffic; and the petitioners urged that such running and user powers and traffic facilities should be extended to the Macclesfield line, and that provision should be made in the bill to secure the petitioners from loss owing to the diversion of traffic which would otherwise pass over their route between Macclesfield and Manchester, as, in the absence of such provision, the North Staffordshire company would derive the entire advantages resulting from the North Western train service provided in their interest under the Act of 1867, destroying the reciprocity in favour of the petitioners, and exposing them to loss in the fulfilment of their obligations under the Act; and that between the petitioners and the North Staffordshire company there were subsisting traffic agreements and arrangements which would be violated and evaded by that company if they used the Macclesfield line as proposed in the bill.

The *locus standi* of the petitioners was objected to, because (1) the bill does not propose to alter or interfere with any property, or with any Act of Parliament, or agreement affecting the petitioners; (2) there is nothing in the bill which could lead to any diversion of traffic from, or competition with, the railways of the petitioners, or any of them; (3) no new powers are conferred by the bill upon the committee to be thereby constituted which are not now enjoyed by the companies promoting this bill, or capable of being exercised; (4) the petitioners are not entitled to be heard according to practice.

Merevether, Q.C. (for petitioners): We deny the statement in the notice of objections, that the bill does not interfere with any Act or agreement affecting us. On the contrary, the agreement made under the authority of the Act of 1867, between the North Western and North Staffordshire companies, will be evaded and broken if the bill passes. Under that agreement we were to have unconditional running powers over the North Staffordshire lines present and future, and they were to have like running powers over all present and future North Western lines, forming a means

of communication between North Staffordshire and Manchester, Liverpool, Birkenhead, and South Staffordshire; those powers, however, not to be used to abstract traffic from the North Western system to that of any other company where the traffic can be carried by the North Western alone, or jointly with the North Staffordshire. If this bill passes, however, the North Staffordshire, instead of sending their traffic to Macclesfield upon our system, will send it by the Bollington line, although at the same time they will avail themselves of their running powers over our system. There will be no mutuality in such an arrangement. The Act of 1867 put us under the onerous obligation of having to run two fast passenger trains daily, and two through goods trains daily, between Manchester and London or Birmingham and Colwich or Stafford and Macclesfield; but under this bill the North Staffordshire will take all their traffic over this substituted route, and so deprive us of it.

Mr. RICKARDS: You do not say that the effect of the agreement is to bind the North Staffordshire company to use the North Western system; it seems only to give them power to use it!

Merevether: The bill does not surrender the rights they acquired in 1867, while they will divert the traffic which they then agreed to send over our system, and give it to this Macclesfield line. We have intimated to the promoters that we shall be satisfied with a saving clause which preserves our rights under the agreement.

Holway (for promoters): By the original Act of 1864 constituting this line, the two promoting companies were authorised to subscribe by far the larger proportion of the capital; and we also then acquired powers of using, maintaining, and working, quite as full as are contained in the bill. The only difference is, that the machinery for regulating the traffic is altered for greater convenience and economy of working. In cases where no new works are authorised, no new competition is created, and no rights are taken away, petitioners have no *locus standi*. (*Carnarvonshire and Nantlle Railway Companies' Bill*; Cliff. & Steph. 94.)

Mr. RICKARDS: The question is, whether the clause in the bill providing that "the two companies may severally or jointly use the undertaking, and every part thereof, respectively, as fully as if the same formed part of the undertaking of each of the two companies," goes beyond the power which the Act of 1864 gave?

Holway: If it does, it only makes more effective the competition already sanctioned, and you have often decided that such a provision does not give a *locus standi*. But the power conferred by the clause is only equivalent to that already existing. Under the Act of 1864, if the North Western company attempted to use the line, they would use it under the control of a joint committee of the three companies; if they attempt to use it under the present bill, they will use it under the control of a joint committee of the two companies, in both cases subject to the decisions of an arbitrator. But the third company, the Bollington and Marple, was really a company only in name, all its funds being obtained under guarantee from the two promoting companies. It was with a full knowledge of the Act of 1864 that the North

Western entered into the agreement of 1867 with the North Staffordshire company, competition as full as any that can arise under the bill having been really sanctioned three years before. If the petitioners wanted a clause to restrain us from the use of this line, they should have inserted one in the Act of 1864, or placed us under terms in the Act and agreement of 1867.

The *locus standi* of the London and North Western railway company was *Disallowed*.

Agents for Bill, *Burchells*.

Agent for Petitioners, *Blenkinsop*.

NORTH AND SOUTH WESTERN JUNCTION RAILWAY (No. 2) BILL.

17th March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.*)

Petition of the GREAT WESTERN RAILWAY COMPANY.

Railway—Perpetual Lease to four Companies—Petition by a fifth—Working Agreement—Junction—Competition.

A bill was promoted for leasing, in perpetuity, a connecting line to four other railway companies. A fifth company, apprehensive of injury from this transfer, petitioned on the ground that it had statutory power to join the connecting line, and had bought land for the purpose. The junction, however, had not been made, and the petitioning company had neither running powers nor traffic facilities over the line about to be leased. The line, moreover, had never been worked independently, but, under a Parliamentary agreement, was in the hands of three out of the four companies named in the bill:

Held, that the petitioners had no *locus standi*.

The bill was one "for authorising a lease (in perpetuity) of the undertaking of the North and South Western Junction railway company"—a line extending from the London and North Western railway near Willesden, to the London and South Western railway near Kew, and also to Hammersmith—to four companies, *i.e.*, the North Western, South Western, Midland, and North London railway companies. The petitioning company, the Great Western, objected to the proposed transfer as injurious to their interests.

The *locus standi* of the petitioners was objected to, because (1) the petitioners had no rights

whatever in or over any part of the undertaking proposed to be leased, and although for several years the petitioners had power to form a connection between their own railway and that of the promoters, they had never done so, and no interchange of traffic could take place; (2) for some time past the undertaking had been and might continue to be worked in perpetuity under a Parliamentary agreement by three of the four companies named in the bill; (3) the petitioners were not entitled to be heard on the ground of competition or on any other ground; (4) they had no sufficient interest according to practice.

Merevether, Q.C. (for petitioners): The undertaking about to be leased crosses our main line near Acton, and we have power to make a junction there, and have already acquired the land for that purpose. That connecting link will afford valuable facilities for forwarding our mineral traffic to the docks and eastern districts of the metropolis; the large steamers in the Thames being supplied almost entirely with coal from South Wales. We have already a line to Brentford, but that is insufficient for the purpose. Three of the companies named compete with us already—two of them in the South Wales district—and with this line in their hands, very different terms might be imposed on us from those which would be made if the line remained independent.

Johnson, Q.C. (for promoters): No impediment exists to the junction with us. But the Great Western have only power to make this junction: they are not entitled to any running powers or traffic facilities. The line, from its commencement, was worked by other companies; and not independently. The only new interest introduced by the bill is that of the Midland company, but their traffic, as regards this bill, is north and south, whilst the Great Western traffic is east and west. [He was then stopped.]

Locus standi Disallowed.

Agent for Bill, *Henry Toogood*.

Agents for Petitioners, *Young, Maples, & Co.*

LONDON AND AYLESBURY RAILWAY BILL.

20th March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.*)

Petition of the GREAT WESTERN RAILWAY COMPANY.

Railway—Lands of—Compulsory Powers affecting—S. O. (in what cases Railway Companies to be heard)—Locus Standi under—Not Limited—Even after deposit of Amended Bill omitting the compulsory powers.—Competition.

Where a railway company has, under the S. O., a general *locus standi* against the bill of

another company for taking or using any part of its lands, &c., the Court will not, on account of the abandonment of such powers by the promoters in an amended bill, limit the *locus* to the usual formal appearance for the purpose of seeing that the provisions objected to are really omitted. The S. O. entitles petitioners in such a case to be heard against the preamble and clauses, and this right is not affected by the subsequent deposit of an amended bill, in which the power originally sought for is struck out.

The bill, as originally framed, was one for the construction of a line between Rickmansworth and Aylesbury, upon land belonging to the Great Western railway company. It also proposed to take running powers into the Aylesbury station, which is the joint station of the Aylesbury and Buckinghamshire and Great Western railway companies. In order, however, to meet the opposition of the petitioners, the bill was altered by the omission of all the powers referring to their land scheduled in the deposited plans, and also the running powers over the Great Western line.

The *locus standi* of the petitioners was objected to, because (1) the promoters intend to strike out of the bill "Railway No. 1," together with all powers relating to the station at Aylesbury, as appears by "the filled up bill" deposited; (2) the amended bill contains no provisions for taking or using any part of the lands, &c., of the petitioners, and affects no property, &c., of theirs; (3) the petitioners are not entitled to be heard on the ground of competition; (4) they have no such interest as entitles them to be heard according to practice, and can only have a *locus standi* (if at all) to see that Railway No. 1 and the powers relating to the Aylesbury station are omitted from the bill.

Saunders (for petitioners): I admit that, upon the decisions, we are only entitled to a *locus standi* to see that those parts of the bill which affect us are omitted. But I submit that we are also entitled to a general *locus standi* on the ground of competition.

Mr. RICKARDS: The bill, as deposited, contains provisions for taking or using the land of the petitioners, and in such cases the S. O. gives a general *locus standi*. I do not think we can limit it on account of any amendment in the filled-up bill.

Without hearing *Saunders* on the question of competition, the REFERENCE called upon *Johnson*, Q.C., to reply upon the first point.

Johnson (for promoters): The *Neath and Brecon* case (Cliff. & Steph. 109) is appropriate.

Mr. RICKARDS: There no part of the land, &c., of the railway company was taken or used.

Johnson: The petitioners are not entitled to a *locus standi*, because they are only part owners of the land in question with the Aylesbury and Buckinghamshire company, and their interest is only an equitable one, the fee being in the Duke of Buckingham. Moreover, by an agreement with the

Duke with a view to the withdrawal of his opposition to a bill in 1861 (for a line from Princes Risborough to Aylesbury), the petitioners undertook to give an access to their Aylesbury station over the land in question to us or any other company thereafter communicating with us at or near Aylesbury. That debars them from now opposing the bill.

Locus standi Allowed.

Agent for Bill, W. Toogood.

Agents for Petitioners, Young, Maples, & Co.

NORTH METROPOLITAN RAILWAY BILL.

20th March, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.)

Petition of JOHN WILLIAM PROUT.

Landowner—Railway Company—Remedies Against Agreement—Option to purchase three acres from estate—Extension of Time Bill—Vendor and Purchaser—Unascertained Lands—"Lord Lyttelton's Case" distinguished.

The principle that a landowner, who is a creditor, has no ground of opposition to an extension of time bill, does not apply in cases where the land to be taken is not defined. Hence, a landowner who had agreed to give a railway company the option of taking three acres from his estate for the purposes of the railway, was allowed a *locus standi* against an extension of time bill, the three acres not being particularly specified, and the vendor's whole estate being subject to the option.

The North Metropolitan Railway Act was obtained in 1866, the time for taking land expiring in July, 1869, and for constructing works in July, 1871. The Board of Trade had extended the time for exercising compulsory powers until July, 1871; and the bill was one for a further extension of time, both for the purchase of land and construction of works.

The petitioner opposed the bill in 1866, but withdrew his opposition in consideration of an agreement afterwards confirmed by the company, by which they were to pay him £5000 for the option of taking three acres out of his estate if they required it for the purposes of the railway, the company to pay the purchase money on or before September 29th, 1867, and in case of non-payment on that day to pay interest at the rate of five per cent. until payment. The petitioner alleged that the company had met all applications for completion of the purchase by the

statement that they were insolvent, the result being that a great part of his estate had been tied up for more than four years owing to the uncertainty as to the particular land which the company might select; that owing to the apparently hopeless insolvency of the company, the petitioner had not yet taken proceedings against them to compel payment of the purchase money, or to obtain compensation for the injury he had suffered from the company's default, but he had always intended to enforce his claim whenever, by the abandonment of the railway, the parliamentary deposit, or the bond substituted therefor, should become available as assets, or whenever any prospect might appear of an execution against the company producing any fruits; that if the bill should pass, the petitioner's opportunities of compelling the company to fulfil their engagements would be still further diminished and delayed, and the petitioner's estate would continue for a still longer period tied up by the right of selecting three acres of it which was vested in the company; and that it would be unjust to him to pass the bill without requiring the company, as a condition precedent, forthwith to perform their agreement, or at any rate give satisfactory security for its performance. There was a clause in the bill saving existing agreements, but the petitioner submitted that it was illusory, his complaint being not so much that the terms of the bill affected the agreement, as that it would diminish, delay, and possibly destroy his opportunities of enforcing the agreement.

The *locus standi* of the petitioner was objected to, because (1) the bill contains no provision for altering or varying the terms and conditions of the agreement and confirmatory agreement mentioned in the petition; (2) the bill contains no provision whereby the rights and remedies of the petitioner under the agreement are or can be in any way prejudiced or affected; (3) the petitioner cannot be heard according to practice.

Hemming (for petitioner): The company may contend that they did not agree to give £5000 for the option of taking these three acres, but only agreed to pay the money if they took the three acres, or otherwise they would pay nothing. Even assuming, however, that the petitioner is to hold his estate subject to such an option, and meanwhile has no claim to the purchase-money, it is obvious that he will suffer serious prejudice from any extension of the time during which his land is to be thus locked up, and he has a right to be heard against an extension bill. The estate is one which must soon be required for building purposes, yet we cannot dispose of it or do anything with it till the company tell us whether they mean to exercise their option under the agreement. Whether our right under the agreement be to the whole £5000, or merely to compensation in case the company take no part of our land, the insolvent position of the company gives us no real opportunity of enforcing our rights till the company are driven to abandon their undertaking. Under the Railways Abandonment Act, 1850, and the Railways Act, 1867, section 31, we, as creditors, can, after obtaining judgment, go to the Board of Trade, state that the company cannot construct their works through lapse of time, and ask for a warrant of abandonment; and provision

is then made for satisfying the obligations of the company out of the proceeds of the bond, on our going to the Court of Chancery for a winding-up order. The bill delays the remedy thus given us by the Legislature, and we are, therefore, entitled to be heard against it.

Ledgard (for promoters): This is an agreement establishing the relations of vendor and purchaser, and in such cases petitioners have invariably been refused a *locus standi*. (*Great Western (Additional Powers) Bill*; (*Lord Lyttelton's case*.) Smeth. 110. *Metropolitan District Railway Bill*, 1870; *Petitions of South Eastern Railway Company, and Whitechapel Board*, 2 Cliff. & Steph. 21. *East London Railway Bill*, 1870; *Petition of Surrey Commercial Docks Company*, 2 Cliff. & Steph. 11.)

Mr. RICKARDS: The agreement here relates to unascertained land; in *Lord Lyttelton's case* there was a notice to take a particular piece of land.

Ledgard: The principle that a landowner, who is a creditor is not prejudiced by an extension of time bill, applies to both cases.

Locus standi Allowed.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Dorington & Co.*

GREAT WESTERN RAILWAY BILL.

23rd March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.*)

Petition of the **MONMOUTHSHIRE RAILWAY AND CANAL COMPANY.**

Railway Companies—Extension of Time Bill—Subscription—Powers of, contained in Second bill—Alleged to be part of same Scheme—Claim to be heard against both Bills—Running Powers—Competition—Illusory Undertaking—Alleged keeping alive of.

In 1865 the Pontypool railway company were incorporated, and power was given to the Great Western company to work the line, which, however, had not since been constructed or begun. The Pontypool company promoted an extension of time bill, and were opposed by the petitioners, a competing company, who, as landowners, had an admitted *locus standi*. Simultaneously, the Great Western company were promoting an omnibus bill, in which they sought authority to subscribe one half the capital of the Pontypool railway. The Monmouthshire company now petitioned also against the provisions authorising such subscription, alleging (*inter alia*) that these provisions formed an integral part

of, and ought to have been embodied in, the Pontypool scheme, which, without them, would be as nugatory as it had hitherto been; that the line, when constructed, was really to form part of the Great Western system; and that the petitioners' opposition to the extension of time bill would not be effectual, unless they were also let in against the Great Western proposal to supply the capital:

Held, however, that the petitioners had no *locus standi* against the bill.

This was an omnibus bill, the only part of it in issue being Clause 72, empowering the Great Western company to contribute £50,000 towards the undertaking of the Pontypool railway.

The petitioners stated (*inter alia*), that in July, 1870, the powers of the Pontypool company to take land expired, and an application made to Parliament last session to extend these powers was rejected; that the Pontypool company were renewing their application this year by a bill now pending, and referred to the same Committee as would consider this bill; that of six directors therein nominated, at least five were directors of the Great Western company; that the petitioners were opposing that bill, their *locus standi* being undoubted; that Clause 72 of the present bill was an integral and inseparable part of the issue to be tried under the Pontypool bill, and that the power of subscription by the Great Western company ought to have formed part of the Pontypool bill, inasmuch as, without such subscription, the grant of further powers to the Pontypool railway company would be illusory; that the Great Western possessed running powers over the petitioners' Eastern Valleys railway with which the Pontypool line would compete; and in consequence the petitioners had expended considerable sums of money which would be unproductive if the Great Western traffic was no longer conveyed by them; that the Great Western company, as the real promoters of the line, should take upon themselves the liabilities incident to it, amongst which were penalties if the undertaking were not completed; and that the proposed subscription, which it would be in their option to make or withhold, tended to keep alive an undertaking devised and maintained as a threat to the petitioners, in order to induce them to grant the use of their railway to the Great Western company upon terms disadvantageous to the petitioners, rather than with any honest intention of constructing the railway.

The *locus standi* of the petitioners was objected to, because (1) the bill does not take, use, or interfere with any lands, works, or property of the petitioners; (2) the power to subscribe to the Pontypool, Caerleon and Newport railway company is not a violation of any contract or engagement between the petitioners and the promoters, nor does it so affect any rights or interests of the petitioners as to entitle them to be heard; (3) the petitioners do not allege any sufficient ground of competition, according to practice; (4) the diversion of traffic alleged as the probable conse-

quence of the subscription before-mentioned, even if such allegation were well-founded, is not a valid ground of objection; (5) the petitioners make no allegation upon which, according to practice, they can be heard.

Venables, Q.C. (for petitioners): We ask to be heard against this Great Western bill, because it is essentially and undistinguishably a part of the proposals in the Pontypool bill, which, without this power of subscription, would be nugatory and useless. Against the Pontypool bill we have an undoubted *locus standi*, amongst other things as landowners, and we claim also a *locus standi* against a clause which ought to have been inserted in the Pontypool railway bill, and without which not a yard of the Pontypool line can ever be made. That line, if constructed, will be just as much a part of the Great Western system as the line between London and Bristol. The directors are Great Western directors; the whole capital must necessarily be provided by or with the aid of the Great Western; it is a line chiefly intended for the conveyance of Great Western traffic; the expense of making it is included in the report of the shareholders' committee among the liabilities of the Great Western, and at the last general meeting, the Great Western Chairman advised the shareholders to proceed with the line and undertake the outlay upon it. Had the Pontypool company been an independent company, we, as landowners, should have been entitled to object to the way in which the capital might be provided. By this bill, half the capital of £100,000 is to be furnished by the Great Western. If, therefore, we are not heard against the Great Western bill, we shall be deprived of the power of objecting to that which is the essential part of the Pontypool bill. From 1865 to the present time nothing has been done in the construction of the Pontypool line; all the powers have long since lapsed, and a bill for reviving these powers was rejected last session. It is the case of a non-existing railway, revived by the Great Western company in their own interests though not in their own name. They would have acted more candidly if they had promoted it as a new Great Western line, and then the scheme would have been considered as a whole, and our right to appear would have been beyond question. To deny us this right now would be to let us in merely against a dummy which the Great Western company have set up to be shot at. We say also that the construction of this line will be contrary to the spirit of engagements by the Great Western company, on the faith of which we went to a large outlay in providing station accommodation at Newport, and gave running powers to the Great Western in consideration of Great Western traffic, every bit of which we shall lose if the Pontypool line is made.

Merevether, Q.C. (for promoters): The station at Newport was not constructed for our accommodation only, and under the agreement we pay a rent for the use of it, whether we use it or not. The Pontypool Act of 1865, which was carried in spite of the petitioners' opposition, empowered the company and the Great Western to arrange from time to time for the working and maintenance of the line, the supply of rolling stock, the interchange of traffic, and the division of receipts. We now say that in order to ensure

the doing of that which Parliament authorised in 1865, we will contribute £50,000 towards the capital. No doubt the line is essentially a Great Western line, and a contract, which will be scheduled to the Pontypool bill, has been entered into for the working of it by us. We also propose to subscribe £50,000 for the purpose of making a line which Parliament has said ought to be made. The petitioners simply hope that if they get a *locus standi* against this clause they may be able to oppose the Pontypool bill with greater effect.

Locus standi Disallowed.

Agents for Bill, *Young, Mayles, & Co.*

Agents for Petitioners, *Dyson & Co.*

BRISTOL PORT AND CHANNEL DOCK BILL.

27th March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM CARTER; and Mr. RICKARDS.*)

Petition of (1) The BRISTOL AND PORTISHEAD PIER AND RAILWAY COMPANY.

Dock Companies—Extension of Time—New Scheme—Competition—Municipal Corporation—Subscription by—Rival Bills—Reciprocal Locus Standi.

A bill was promoted by a dock company whose works were partially completed, and whose compulsory powers of purchase had expired, to revive and extend their powers. The bill was opposed by a railway and pier company three miles off, who were themselves promoting a bill to change their existing pier into a dock, and furnish deep-water access to the port of Bristol. A large subscription to one or other dock had been promised by the Corporation of Bristol; and in each bill a power of subscription was accordingly given to the corporation. The petitioners offered and asked for a *locus standi* reciprocally on the two bills; but the promoters declined, contending that they merely sought an extension of powers, already recognised in principle, whilst the rival project was altogether new:

Held, however, that, under the circumstances, both parties ought to be heard upon their petitions.

By an Act passed in 1864 the promoters were authorised to construct a dock, near the mouth of the River Avon on the Gloucestershire side of the river, and a railway connecting it with the Bristol Port railway. Financial difficulties, however,

intervened, and after they had expended about £64,000, their power of purchasing land expired; the present bill accordingly was brought for extension of time. The petitioners, the Portishead Pier and Railway company, were the authors, practically, of a rival bill [see page 122]. In 1863 they were authorised to make a pier, jetty, and railways to Portishead, a point at deep water on the Somersetshire side of the Avon; and having constructed their works at a cost of £290,000, they now came for power to turn the pier into a dock, thereby establishing direct competition with the Bristol Port, &c., company, in the event of both docks being completed. The Corporation of Bristol had passed a resolution in favour of appropriating £100,000 towards one or other of these dock schemes; both bills therefore contained clauses enabling the corporation to subscribe.

The *locus standi* of the Bristol and Portishead, &c. company was objected to, because (1) it was not shewn that any competition would result from the bill; (2) no lands, &c., of the petitioners, and (3) no right or interest of theirs, were taken or affected; (4) no sufficient interest in the bill was shewn.

Rodwell, Q.C. (for petitioners): Our works are completed, but we now seek to make a harbour accessible at all states of the tide. Our Amendment Act of 1866 contemplated the change from a pier to a dock, for it provided for a different scale of rates in the event of our obtaining any such powers. Portishead is about three miles from Avonmouth, where the promoters' dock is being constructed; and Bristol is the common point to which the traffic will go. In addition to ordinary competition, there is the special competition for this £100,000 which the corporation will only give to one of the undertakings. The principle of a dock and railway to deep water has been sanctioned in both cases, and we both want power to carry out that principle. But they are practically defunct; whilst we have accomplished what we undertook. The Committee might say that both bills ought to be passed. But according to popular acceptance of the term "competition," as well as under the construction placed upon it by this Court, we ought to have a *locus standi*.

Mr. RICKARDS: Are you willing to offer them a *locus standi* against your bill, if they will allow you to be heard against this?

Rodwell: Undoubtedly.

Merewether, Q.C. (for promoters): The positions are not the same. Our dock is authorised and partly made, and we ask only for an extension of time. They now seek, for the first time, power to make a dock. The reference to a dock in the Act of 1866 is merely a condition, attached to the imposition of rates of a totally different character—a protection to the corporation in a contingent event; not any power conferred on the petitioners. We, in our own defence, have a right to be heard; they have none.

The Court (after consultation): The *locus standi* in both cases is allowed.

Locus standi Allowed.

Agents for the Petitioners, *Dyson & Co.*

Petition of (2) OWNERS, &c., IN BRISTOL.

Docks—Municipal Corporation—Subscription by, to Docks—Apprehended Increase of Rates—Owners of Property and Warehouses—Representation—Competition.

A bill promoted by a dock company empowering (*inter alia*) the Corporation of Bristol—seven miles up the river—to subscribe towards their undertaking, was opposed by owners of property and of warehouses in Bristol, some of whom were resident in and others outside the borough, on the ground of the liability to extra rating which this subscription would entail, and of the competition which the docks, when completed, would carry on with existing warehouses. The docks had been authorised by a previous Act in 1864, which gave an option of purchase to the corporation. The owners of property, however, contended that they were not represented in the Town Council :

Held, that such only of the petitioners as were owners of property in Bristol, and not municipal electors, were entitled to a hearing.

These petitioners objected specially to the power of subscription to the undertaking given to the corporation. Some represented themselves as owners of property subject to rates in the borough, but who, from non-residence, had no votes in the election of councillors ; others as owners of warehouses in the city, which would be rendered valueless if docks and warehouses were established at the mouth of the Avon. They all complained that it was "foreign to the purposes of a corporation and inconsistent with its duties to incur liabilities and to tax inhabitants for undertakings in nowise municipal or connected with the improvement of the city and the health and comfort of its inhabitants."

Their *locus standi* was objected to, because (1) it was not shewn that they were inhabitants of any town or district injuriously affected ; (2) no lands, rights, &c. of theirs would be taken or affected ; (3) it could not be ascertained from the petition which (if any) of the petitioners were owners unrepresented and liable to taxation ; (4) neither could it be ascertained which of the petitioners were owners, as alleged, of warehouses ; the injury apprehended to their property was one caused, if at all, under the Act of 1864, and the petitioners, therefore, were complaining of past legislation ; (5) the corporation, by the Act of 1864, were empowered to purchase the undertaking of the dock company upon certain specified terms, involving a larger outlay than would be required for the exercise of the power of subscription contained in the bill ; (6) the reasons urged by the petitioners were in reality reasons against the wider powers granted to the corpora-

tion by the Act of 1864 ; (7) no sufficient interest in the objects of the bill was shewn.

Clerk, Q.C. (for petitioners) : Our *locus standi* against the rival bill is not objected to, and our interests in both cases are distinct from the general interests represented by the corporation.

Mr. RICKARDS : It does not appear what portion of the petitioners reside beyond the borough limits ?

Clerk : No ; but, wherever the petitioners live, the whole of their property is within the city and liable to rates. The corporation receive certain dock-rates and dues, forming the primary fund for the maintenance of the port, harbour, and docks, and for liquidation of interest and principal of the heavy debts affecting the harbour. These funds, however, would be inadequate but for two rates. Of these, one producing £2,400 yearly, is levied on ratepayers and owners of property in certain parts of the city ; and the other, producing £8000 yearly, is levied on ratepayers and owners of property throughout the city. Both rates go in aid of the revenues of the Dock Estate ; and any outlay, beyond what these will meet, must be made good by the borough fund and borough rate. Though you do not hear ratepayers against their governing bodies where the rates are to be applied to municipal improvements, (*Northampton Corporation Markets and Fairs Bill*, 1870, 2 Cliff. & Steph. 6), there are exceptions, where arrangements adverse to the ratepayers' interests can be suggested as probable. (*Liverpool Tramways Bill*, 1868, Cliff. & Steph. 142.) Our case is stronger still, for here the corporation are subscribing to a joint-stock undertaking seven miles away from Bristol. If the ratepayers need not be consulted, what limit will there be to the investment of municipal funds in outside schemes—possibly at the suggestion of interested persons ?

Mr. RICKARDS : Would you say that a corporation was not justified in any case in expending money on an undertaking outside the limits of the city, even if such undertaking were conducive to the commercial interests of the city ?

Clerk : No ; but the question whether it would be a wise disposal of their funds ought to be tried in Parliament, at the instance of the ratepayers. In itself, such an expenditure is *dehors* the powers with which Parliament has entrusted corporations. If all the petitioners who are ratepayers cannot properly be heard, at least those who will be specially injured, as owners of warehouses, should be. I can distinguish these by evidence, if necessary. It is true these docks were authorised in 1864, and an option of purchase was given to the corporation. But then they were to be docks carried on with private funds. Under this bill we shall be contributing money to raise up competition with ourselves. But for this subscription, it is very doubtful whether the undertaking could be carried out at all. As to owners of property in Bristol, liable to rates, but as non-residents having no share in the election of town councillors, they are clearly entitled to be heard. (*Sheffield Corporation Water Bill*, 1870, 2 Cliff. & Steph. 54.)

Mereuether, Q.C. (for promoters) : The jurisdiction of the corporation is not confined to Bristol. They are conservators of the river Avon altogether, and of the Severn as far as Flatholme.

In 1848 they became owners of docks, and in 1865 were authorised to spend £400,000 in improving the river. The petition is numerously signed, no doubt, but this question was tried out in 1864, and not only was power then given to the corporation to purchase these docks, but the time and conditions of purchase were defined. This subscription of £100,000 will be less onerous to the ratepayers than the purchase.

Mr. RICKARDS: There was another argument of Mr. Clerk's, that many of these petitioners, as warehouse owners, will have to compete with the very undertaking which receives a contribution out of rates levied upon them?

Merewether: The warehouses upon the margin of the Bristol Docks are owned by the corporation, who will not do anything to injure their own property; their interests are precisely the same as those of private owners of warehouses. Moreover, the new works are intended for ocean-going steamers, which could never get up the river to the warehouses in Bristol. There is accordingly no question of competition between them.

The CHAIRMAN: The *locus standi* of the petitioners is *Disallowed*, except in the case of owners in Bristol who are not municipal electors.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Dorington & Co.*

BRISTOL AND PORTISHEAD PIER AND RAILWAY (PORTISHEAD DOCKS) BILL.

27th March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of THE BRISTOL PORT AND CHANNEL DOCK COMPANY.

Dock—Conversion of Pier into—Competition—New and Existing—Municipal Corporation—Subscription by—Rival Bills.

A bill was promoted by a railway and pier company authorising them to convert their pier, already made, into a dock. The bill was opposed by a dock company three miles off, whose works were only partially constructed, who were themselves promoting a bill in Parliament to revive and extend their powers. The object of both undertakings was the same—to furnish a deep-water instead of a merely tidal approach to the port of Bristol. The corporation of Bristol had promised a large subscription to one or other of the docks; and both bills accordingly contained a subscription clause:

Held, that the petitioners were entitled to a *locus standi*.

This was "a bill to authorise the Bristol and

Portishead pier and railway company to construct docks at Portishead; to amend and enlarge the existing Acts relating to the company; and for other purposes." The petitioners, the Bristol Port and Channel Docks company, were owners of a dock in process of construction at Avonmouth, about three miles distant from Portishead, intended to accommodate traffic of the same class as that of the promoters. The petitioners were also promoting a bill simultaneously as to their own undertaking. [See page 120].

The *locus standi* of the petitioners was objected to, because (1) no land or property of theirs was taken or used; (2) the direct competition alleged between the proposed dock and that which the petitioners had power to construct on the Gloucestershire side of the river Avon was not such as entitled them to be heard; (3) no sufficient ground was shewn according to practice.

[For arguments of Counsel, see rival bill, page 120].

Locus standi Allowed.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Dyson & Co.*

TEES CONSERVANCY BILL.

27th March, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petitions of (1) the STOCKTON RAIL MILL COMPANY (Limited) and others; (2) the STOCKTON-UPON-TEES CHAMBER OF COMMERCE; (3) OWNERS OF LAND ADJOINING THE RIVER TEES; (4) SHIPBUILDERS, BANKERS, MERCHANTS, &c., of STOCKTON-UPON-TEES AND SOUTH STOCKTON; (5) OWNERS OF LAND ABUTTING ON THE RIVER TEES (A. H. NEWCOMEN and others).

River Conservancy—Reconstitution of Board—Representation—Municipal Corporation—Local Board—Shipowners—Exporters—Inhabitants—Reclamation of Lands—Foreshore—Riparian Owners—Pre-emption, right of—Upper Waters—Navigation of—Apprehended Injury to—Chamber of Commerce—Signature by Chairman and Secretary—Authority of.

A bill to reconstitute a river conservancy board was promoted by persons residing in and about Middlesbrough, who alleged that they paid five-sixths of the statutory dues levied by the board. Under existing Acts each of the corporations of Stockton and Middlesbrough had power to nominate five members to the Conservancy Board; and with this power the promoters did not interfere. The bill, which proposed no alteration in the rating or other powers exercised by the board, was

opposed by the corporation of Stockton and the local board of South Stockton, who alleged that the proposed scheme of reconstitution would give a predominating influence to Middlesbrough, situated near the mouth of the river, the inhabitants of Middlesbrough not being, therefore, interested in maintaining the navigation of the upper portions of the river, where Stockton and South Stockton were situated. The *locus standi* of these petitioners was not objected to. The bill was also opposed upon the same grounds by (1) various iron companies, including exporters and importers of Stockton, by (2) the Chamber of Commerce of Stockton, and by (4) 1,419 inhabitants of Stockton, including shipowners, exporters and importers. One of the clauses proposed to confer rights of distinct representation at the board upon shipowners, as well as upon exporters and importers, of Stockton and Middlesbrough combined:

Held, that the Chamber of Commerce had no *locus standi*, but that petitioners (1) and (4) were entitled to be heard, they not being represented by the corporation or local board, and having (as to some of the signatories) a distinct interest recognised by the bill. The Court refused to adopt the suggestion of promoters, that either of these petitions would be sufficient for purposes of representation, the description of the petitioners in each being substantially the same.

Under the Acts constituting the conservancy and since passed, the board were empowered to reclaim lands upon first obtaining the assent of the Admiralty; but they were bound to give one-fourth of the land so reclaimed to the riparian owners, who also had rights of pre-emption over the remainder. No representation was conferred upon these riparian owners by any Act, nor did the new scheme propose to give them any. They now petitioned — (3) and (5) — insisting on their right to representation in the conservancy board, in order that they might have some control over works which affected their property as frontagers on the upper portions of the river. They also opposed the bill on the ground that it would leave the chief control of the conservancy in the hands of persons only interested in the lower waters, to the possible injury of riparian property further up the tide-way, which might otherwise be required for the sites of blast furnaces and other works:

Held, that no change in their status being proposed by the bill as to rating or otherwise, and no new powers affecting them being sought, the petitioning landowners were not entitled to a *locus standi*.

The bill was promoted by ironmasters, shipowners, exporters and importers, and others, and its object was the reconstitution of the Tees Conservancy Board, increasing the number of its members from 15 to 21. The conservators were at present appointed as follows: — Three by the Admiralty, five each by the corporations of Middlesbrough and Stockton, and two by the ratepayers of Yarm. The bill proposed to give one member to the Yarm ratepayers, one to Port Clarence, two to shipowners registered in the Custom-house books of the ports of Stockton and Middlesbrough combined, two to exporters and importers in those towns combined, one to ratepayers of Easton, one to the local board of health for South Stockton, three to the Admiralty, and five each, as at present, to the town councils of Middlesbrough and Stockton.

The petitioners (1) the Stockton Rail Mill company (limited), and other owners of ironworks on or near the banks of the Tees at Stockton-on-Tees, and exporters and importers there, alleged that some of them were the owners of wharves and quays on the river, and all of them shipped large quantities of iron on the Tees, and were deeply interested in all that affected the river. They urged that they would be injuriously affected by the bill, if passed, inasmuch as it would materially alter for the worse the position of Stockton-on-Tees as one of the constituents of the Tees Conservancy Board, and would give a preponderating influence on the board to Middlesbrough, Port Clarence, and Easton, which were on the lower part of the river, and were rivals in trade with Stockton; that Middlesbrough would carry the election both of shipowning and exporting and importing members; and the petitioners added that they regarded the bill with the greater apprehension on account of a bill now pending in which the North Eastern railway company sought power to construct a line to be carried over the Tees between Stockton and the sea, but above Middlesbrough, Port Clarence, and Easton, which bridge was to be constructed under the inspection and subject to the approval of the engineer of the Tees Conservancy Board; and it was obviously unjust to the petitioners that rival ports lower down the river should predominate on a board whose engineer had the option of approving a bridge which would be most prejudicial to petitioners.

The petition of (4) shipbuilders and others was headed, "the humble petition of the undersigned shipbuilders, bankers, merchants, and traders of the towns of Stockton-on-Tees and South Stockton and shipowners registered in the custom-house books of the port of Stockton, exporters or importers at that port and of the other undersigned inhabitants," 1,419 in number. It set forth in substance the same statements as those just recapitulated, and added that iron ship building

was carried on to a large extent at Stockton and South Stockton; that in such ship-building and traffic the petitioners were more or less directly interested, and for the protection and security thereof it was essential that Stockton and South Stockton should be adequately represented on the conservancy board; and that if any alteration were made in its present constitution a larger proportion of members ought to be given to those towns. The petition of (2) the Chamber of Commerce was to the same effect.

The petition of (5) the landowners abutting upon the river Tees (Mr. Newcomen, Sir Charles Lowther, and others) set forth that under the provisions of the Tees Conservancy Acts 1858, 1863, 1867, a considerable extent of land had been reclaimed by the Commissioners from the bed or foreshore, rights of pre-emption being reserved to riparian owners, and further reclamations were intended to be made, such reclamations being effected principally by the deposit of slag produced at the blast furnaces of the district, upon certain lines sanctioned by the Board of Trade; that this power of reclamation, affecting as it did the estates of the petitioners and others, required to be jealously guarded, and that the tendency to it would be greatly increased if a preponderating power in the Commission became vested in ironmasters and others requiring accommodation for the deposit of their slag, who are especially interested in effecting by that means the reclamation of land upon a large scale. The petitioners further complained that the frontagers were not represented on the Commission and had no voice in arrangements materially affecting their interests and the value of their respective estates; that the bill would give an enormous preponderance of representation to Middlesbrough and the interests connected therewith, embracing an aggregate frontage to the river of about seven miles, whilst the whole of the remainder of the Tees within the tidal limits, embracing a frontage of about forty-five miles, would be virtually placed entirely in their power; that such a measure might be most seriously detrimental to the various landowners and others whose estates and properties abut upon the river, and might prevent the extension and development of works; and that in the event of any change being made in the constitution of the Tees Conservancy Commission, landowners upon the banks of the river, whose interests were necessarily of a permanent and irremovable character, and who were vitally interested in the future development of the trade of the district, ought to be directly represented thereon.

The petition of (3) owners of land "adjoining the river Tees between the township of Newport and the extreme limits of the tidal flow of the same river in a westerly direction towards the source thereof," set forth that the tidal flow of the river extended for a distance of nearly twenty-six miles from the sea, two-third parts of which, or thereabouts, were above Newport, and that the petitioners' estates adjoined the river for the greater portion of that distance on each bank. The petitioners made, in substance, the same allegations as those in the last-mentioned petition, but also stated that the future extension of works, foundries, furnaces, rolling mills, and manufactories in the district now subject to the Tees Conservancy

Act would, in all probability (owing to the scarcity of available land on the lower portion of the river), extend up the river, and the value of the petitioners' land adjoining and near to the river would therefore greatly increase, and consequently the petitioners' interest in the proper management of the navigable portion of the river would greatly increase also.

The *locus standi* of the Stockton rail mill company and others was objected to, because (1) the petitioners are not the municipal or other authority having the local management of any town or district injuriously affected by the bill; (2) the Corporation of Stockton-on-Tees, who have petitioned against the bill, represent the ratepayers and owners of property in that town, and the interests of the petitioners are the same as those of all other owners of property and ratepayers there; (3) the petitioners have not stated any ground in their petition, nor have they any interest, entitling them to be heard according to practice.

In the case of the Stockton-upon-Tees Chamber of Commerce it was further objected that, besides the Corporation of Stockton-on-Tees, the Town Council of South Stockton, and the Local Board of Health for the district of South Stockton, had petitioned against the bill and represented the ratepayers and owners of property in those towns and districts, and the petitioners were not entitled, according to the present constitution of the Tees Conservancy Board, to any separate representation on such board. The *locus standi* of the other petitioners was objected to on similar grounds.

Mundell, Q.C. (for the Stockton rail mill company, limited): The bill is not promoted by the Tees Conservancy Commissioners themselves, but by certain persons who for the most part carry on business at Middlesbrough, Easton, and Port Clarence, and who will therefore naturally consult the interests of the lower reaches of the river against interests which lie higher up. We ship large quantities of iron; and upon that allegation of fact I claim to be heard, for the bill professes to give importers and exporters a voice in the election of the new board, and it is plain we must be entitled to see that that interest is properly and sufficiently represented. The corporation of Stockton has petitioned against the bill, and their *locus standi* is not objected to; but our interests are not theirs. They have nothing to do with the trade of the town. They hold the property of the town, and have rating powers for other purposes. They may urge that they have not a due proportion of members in the conservancy. But our interest is separate and distinct from that of the ratepayers generally; and the bill admits this fact, for it names us as a class, creates us as a constituency, and provides that two persons shall be elected "by the exporters and importers in the ports of Stockton and Middlesbrough combined." Thus the bill answers the objection that our interests are the same as those of all other ratepayers and owners. As to the proposed bridge, vessels of 3000 tons burden are built at Stockton and floated down even now with great difficulty; and any shallowing of the river which may arise from the construction of this bridge or from neglect in attending to the upper part of the river may be of very serious consequence to our trade.

Mr. RICKARDS : Are the works of the petitioning companies all within the borough of Stockton ?

Mundell : Yes, all are within the borough, and all pay rates. Being joint stock companies we are not voters, but I do not put the case on that ground. The bill admits that we are a class distinct from those represented by the municipal authorities; and as one of the proposed constituencies under the bill, we say our representation ought not to be joined with that of Middlesbrough.

Venables, Q.C. (for the Chamber of Commerce; and for shipbuilders, bankers and merchants) : The Chamber of Commerce comprise all the traders, and are a representative body.

Littler (for promoters) : The petition is only signed by the secretary and chairman.

Venables : No doubt this petition is the result of a vote of the chamber.

Littler : You do not say so in the petition.

Venables : That is immaterial. It is not necessary for this purpose to say in what capacity the subscribers have signed; it must be implied that the chamber has instructed them to petition. However, if the *locus standi* of shipbuilders and others is admitted, it matters little whether the chamber is heard also, for they represent much the same interest. The people at Middlesbrough, Eston, and Port Clarence, to whom the bill will give a preponderating influence at the board, have no interest in removing impediments or obstructions above Middlesbrough; on the contrary, they have an interest in not preserving the upper navigation, because, as competitors with Stockton, it would be advantageous to them that the river should be silted up above Middlesbrough. Thus the very existence of Stockton and South Stockton, with a population which in 1861 was 36,000, will be at the mercy of a conservancy in which they will have but a small voice. The reason it is now sought to alter the constitution of the trust is in order to make the proposed bridge. If that bridge had not been projected, no one would have thought of the reconstitution of the trust. One of the objections to our *locus standi* is that we are represented by the corporation. But we are shipowners, exporters and importers, and other persons of just the same description as the promoters of the bill; and if a set of individuals so describing themselves may promote a bill for their interests against those of Stockton, it cannot be contended that we, who answer to the same description, may not be heard against the bill. A majority of the conservators now on the board represent the upper parts of the river, and carried against the Middlesbrough members a resolution that a petition should be presented against the *North Eastern Bill*. [See page 147.] But if the board now proposed had existed, there would have been no petition, and as the object of Middlesbrough is that the trade of Stockton should move itself to Middlesbrough, the conservancy would probably have liked the bill a great deal better if it stopped the river up.

Littler : The town of Middlesbrough is petitioning against the bridge.

Venables : It is a mere petition to watch for clauses. The Corporation of Middlesbrough are virtually promoters of the bill. Objection is taken that the Corporation of Stockton represent the inhabitants. But there have been several cases, in

which not only corporations, but also inhabitants have been heard against bills; and cases where you have admitted inhabitants in preference to corporations.

The CHAIRMAN : You need not go into that point at any length, as you allege a distinct interest as exporters, importers and shipowners.

Littler : We are petitioners against the *North Eastern*.

Lloyd, Q.C. (for owners (5) of land abutting on the Tees) : My clients are frontagers upon the river Tees and owners of property which abuts upon the river, managed by the present conservancy. Under various private Acts the conservancy commissioners acquired from the Crown power of reclaiming land, certain rights of pre-emption being reserved to the frontagers on the river. Against these Acts, affecting their proprietary interests, the frontagers would have had a clear right to be heard, but as they did not appear, we must assume that they assented and did not choose to be heard, being satisfied that the conservancy commissioners as then constituted would not exercise this right to their detriment. The law as to the rights of frontagers is this: the Crown no doubt has the right to the bottom of the sea or river, and to that part which is sometimes covered and sometimes uncovered; i.e., up to the point of ordinary tide. There is a general right in the public, nevertheless, to pass over it for purposes of navigation, fishing, and so forth, and that not merely when the tide is in, but when it is out. But the frontager has the further right of direct access from his land to enjoy those privileges of navigation and fishing which are possessed by himself in common with all the public; and the Crown cannot exercise the right of reclamation to such an extent as to enclose a piece of land belonging to another person between him and the navigable river, which he has the right of using for navigation and for fishing. Consequently he has, as an owner of land, a certain proprietary right of access which would be interfered with if land were reclaimed in front of him, and sold to some other person, thus interposing a strip of land belonging to a different owner between him and the navigable river to which he has the right of access. Nothing but an Act of Parliament could justify such an interference with his right, and he would consequently have a *locus standi* to be heard against a bill brought in for that purpose. In this case the landowners were satisfied that the conservancy commissioners, as formerly constituted, would not exercise the right of reclamation to their detriment. But it is now proposed entirely to reconstitute the board, introducing into it persons who have interests at variance with ours. We ask to be heard before the Committee, to claim a share in the representation for ourselves and other frontagers.

Mr. RICKARDS : Has the work of reclamation authorised by existing Acts been done, or does any of it remain to be done ?

Lloyd : A great deal remains to be done. One of the petitioners (Sir Charles Lowther) must, in order to keep himself on the shores of the Tees, buy 35 acres of land at £200 an acre.

Mr. RICKARDS : Does the bill extend the existing powers of reclamation or give any new power ?

Lloyd: No, but the exercise of these powers may be very different in the hands of the new body. The petitioners own two miles of land in front of which reclamation has been going on and will go on, and we must either buy additional strips of land along these two miles, or be content to be shut out from the river. We claim to be heard not under S.O. 134, but under the old practice of Parliament, on the same principle that all persons are heard whose commercial interests, analogous to those of traders and freighters, or whose properties are injuriously affected by a bill. Thus in the *Liverpool Improvement Bill* (Cliff. & Steph, 71.) owners of slaughter-houses were allowed to be heard; and in the *Bristol Pilotage Bill* (before the establishment of the Court of Referees) where it was proposed that certain bodies should elect members of the board, the representatives of the harbour and docks at Penarth were heard respecting a share in the election.

The CHAIRMAN: You say a frontager is in a position somewhat analogous to that of a commoner: he has certain rights over and above those of the public?

Lloyd: Yes: and by reason of his ownership of certain lands he has rights over adjoining land.

Venables, Q.C. (for landowners (3) adjoining the Tecs): I pray Mr. Lloyd's arguments in aid of mine as representing other persons having frontage. The corporation and the local board of Stockton in no sense represent the landowners outside their district, and are in no way bound to protect the interests of such landowners. Some of our land may be within the Stockton or South Stockton district, but the greater part of it is outside. The whole of our land is within the limits of the Conservancy Act of 1852, and the commissioners are empowered to deal with it. The bill is promoted by persons interested in the lower part of the river, and as the conservancy commission possesses wide powers over our land, and its prospective value depends almost entirely upon the maintenance and improvement of the navigation of the upper part, we are entitled to ask Parliament for a voice in the election of the trustees.

Little (in reply): The distance for which the Tecs is navigable is exceedingly limited, and nothing larger than a barge can pass through that part of the river which lies above Stockton bridge. From Stockton to the mouth of the Tecs the distance is nine miles, seven miles of which are within the district of Middlesbrough. The conservancy funds are derived from dues and charges from vessels entering the river, and five-sixths of these are paid by Middlesbrough. As to the landowners who petition, they are not going to be rated. Their position is unaltered by the bill. They do not say that their property will be injured, but that possibly in the future it may be injured, because the conservancy board will not do their duty. But if the board neglects its duty, and allows the navigation to silt up, any person interested may apply to the Court of Queen's Bench for a mandamus. So long as the navigation of the river is properly maintained, and the landowners are not rated, what right have they to be represented on the conservancy? If they wished for such representation, the proper time

to ask for it was when the Acts of 1852 and 1858 were passed. Parliament gave them no voice at that period, and they have no right to be heard now, merely because it is felt necessary to alter the proportions in which persons shall be represented whose interests are really affected by the board, and who, directly or indirectly, are rated under the Conservancy Acts. Unless the landowner alleges some specific interference with his land, as Mr. Lloyd's clients do, he has no right whatever to be heard. As to the frontagers represented by Mr. Lloyd, it is true that certain parts of the river may be reclaimed, but not at the cost of the landowners. The Act of 1852 provides that the conservancy commissioners shall execute these works of reclamation at their own cost, giving one-fourth of the land, when reclaimed, to the frontager as compensation for the loss of the frontage, with a right of pre-emption for the rest. If, therefore, Sir Charles Lowther is about to give £200 per acre for this land, it shows that he and other frontagers are very fortunate in having obtained one-fourth part of land which is now worth that price, being previously worth nothing. Under the Acts we are bound to procure the assent of the Admiralty before any land can be reclaimed. At present we have exhausted our powers, and must procure the further consent of the Admiralty before any other land can be reclaimed. The landowners would be heard before the Admiralty gave their consent to any further reclamation, and in this respect the newly-constituted board would have neither less nor more power than the old board. No new powers are sought for. On the contrary, the power of the new board is expressly limited to that exercised by virtue of existing Acts. What the landowners really want to do is to repair past legislation by obtaining now a representation which Parliament has hitherto denied them. But their own petition puts them out of Court, by showing that they are not now represented, and have no interest in the conservancy board. As to the other petitioners, the Chamber of Commerce is a private society, consisting sometimes of very important persons, and sometimes of very unimportant persons. Such a body cannot claim to represent the whole trading interests of a town, especially as the municipal authorities have petitioned, and as the shipbuilders, merchants, &c., will also represent the trading interests of the town. The president and the secretary simply sign for themselves. They do not say that they sign by the order or authority of anybody, or that any meeting has been held at which a resolution was passed. The chamber has not a common seal, nor is it an incorporated body. It is merely a private body, and we do not know whether there are a hundred members, or ten, or five. The petition of the Chamber of Commerce is almost identical with that of the 1419 shipbuilders, bankers, merchants, and this identity of language shows an identity of interest. This petition of shipbuilders, &c., is again almost identical with the petitions from the Corporation of Stockton and the local board of South Stockton, whose *locus standi* is not objected to. No doubt, in some cases it might be said that a corporation might be content with clauses which would not suit the traders, and that, therefore, both should be heard. Here, however, the traders not only

elect the corporation, but the corporation elects a portion of the present commissioners, and under the bill will elect them still. This petition of shipbuilders and others is, therefore, the petition of the whole population of Stockton over again in another name. Last comes the petition of the Stockton Rail Mill company (limited), and other companies. Why could they not sign the petition of shipbuilders, &c.? In both cases the claim is grounded on the fact that they are exporters and importers; there is no separate interest. The double petitions are presented for the purpose of heaping opposition on our heads; but I submit that neither set of petitioners is entitled to be heard, they being represented by the corporation and local board, whose petitions relate to questions affecting trade only. If these persons are allowed to come in, we might fairly have objected to the *locus standi* of the corporation and the local board. We cannot have two sets of petitioners to represent the trade of Stockton. The corporation and local board petition as representing the trade of Stockton, and we regarded them as the proper persons to appear. As to the proposed North Eastern railway bridge, it is hardly necessary to contend that bills presented by two independent bodies having no connection with each other, and not even grouped together, cannot be connected for the purposes of argument here. The petitioners can, if they like, petition against the North Eastern Bill, but they have no right to say—"If the North Eastern railway company get power to make the bridge, and if you do not perform your duty, those two contingencies taken together will entitle us to be heard."

The CHAIRMAN (after deliberation): The *locus standi* of (1) the Stockton Rail Mill company, and others, is *Allowed*.

The *locus standi* of (2) the Stockton-upon-Tees Chamber of Commerce is *Disallowed*.

The *locus standi* of (3) Owners of Land adjoining the River Tees is *Disallowed*.

The *locus standi* of (4) Shipbuilders, Bankers, Merchants, &c., of Stockton-upon-Tees and South Stockton is *Allowed*.

The *locus standi* of (5) Owners of Lands abutting upon the River Tees (A. H. Newcomen and others) is *Disallowed*.

Agents for Bill, *Wyatt & Hoskins*.

Agents for Stockton Rail Mill company, *Dyson & Co.*

Agents for Stockton Chamber of Commerce, *Dorington & Co.*

Agents for Owners of Land abutting on the River Tees, *Dorington & Co.*

Agents for Shipbuilders, Bankers, Merchants, &c., *Dorington & Co.*

Agents for Owners of Lands, &c. (A. H. Newcomen), *Dyson & Co.*

ALCESTER AND STRATFORD-UPON-AVON RAILWAY BILL.

3rd April, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of (1) the MIDLAND RAILWAY COMPANY.

Railways—Board of Trade—Railway Facilities—Working Agreement—Periodical Revision—Effect of—Lessees or Agents—Compulsory Partnership.

A bill for the construction of two lines of railway to join a separate line already existing was opposed by a third railway company, which, under a Parliamentary agreement, worked and maintained the line now proposed to be joined, and, in that capacity, had been served with notice by the promoters. It was objected that the working company were neither owners, lessees, nor occupiers, and that the agreement, being subject to periodical revision by the Board of Trade, could not be regarded as perpetual, and could not entitle the petitioners to object to the grant of facilities to other railways, more especially as the company, whose line they worked, approved of this application to Parliament. A limited *locus standi* was offered and refused:

Held, that the petitioners were entitled to be heard generally.

This was a bill "for making railways for improving the communication between Alcester and Stratford-on-Avon, and for other purposes."

Under the powers of the Evesham and Redditch Railway Act, 1863, an agreement, dated 20th April, 1867, was entered into between the Evesham company and the Midland company, whereby the Evesham company were to make the line, and, when opened, the Midland company were, at all times, and at their own expense and risk, to maintain, manage, man, stock, work, and use it so as to develop and accommodate, not only through, but local traffic, one-half of the divisible receipts being paid to the Midland company for their expenses, and the other half to the Evesham company. Having the interest in the line which this agreement gave them, the Midland company objected to the provisions of the bill, under which new railways, joining the Evesham railway, were to be authorised, and to which it appeared that the Evesham railway company assented.

The *locus standi* of the petitioners was objected to, because (1) it was not shown that any competition would result from the bill; (2) no lands, &c., of theirs, or facilities affecting their line, were taken; (3) they were not bound, as stated, to maintain the Evesham and Redditch railway in perpetuity, and to work the traffic thereon; (4) the existing agreement (if any) was subject to revision by the Board of Trade, and might virtually be rescinded decennially; (5) and (6) the existence of the alleged agreement did not entitle them to object to the bill; (7)

save as regards Clause 47 the petitioners had no sufficient interest.

Bidder (for petitioners): We are bound to maintain the Evesham railway. The bill contains provisions for making junctions with that line, which will be attended with danger, inconvenience, and obstruction to traffic; and the running powers and facilities proposed to be taken over the Evesham railway are unjust to us. Clause 47 forces us into a compulsory partnership with companies who are our rivals elsewhere.

Granville Somerset, Q.C. (for promoters): We will concede you a *locus standi* for the purpose of seeing Clause 47 struck out.

Bidder: I claim a *locus* against the whole bill. The junctions between the proposed line and the Evesham railway establish a physical contact, and we are practically lessees of the Evesham railway. The promoters themselves have treated us as the occupiers, having served notice upon us in respect of the lands they are going to take at the junctions. They desire also to use the works, staff, stations, and accommodations along the Evesham railway—all which we provide and maintain. The wear and tear will be increased by their traffic, the repairs of the line will be heavier, and we shall be responsible. Are we not to be heard? As to the agreement, the Board of Trade may revise, but have no power to terminate it. The question of competition is raised by my petition; but I don't go into that.

Granville Somerset: In seeking these powers we are in accord with the Evesham company, whose line we shall join. And what they believe will be for their benefit is opposed by the Midland company, who have only a working agreement with them. The petitioners are not leaseholders or occupiers; they are only agents; they have no interest in the soil. In the absence of express agreement, they would not be liable for rates. Their own Acts give them no power over the Evesham line: their whole interest arises under this agreement, to a renewal of which the sanction of the Board of Trade must be given; and that department might put in conditions, rendering the agreement so objectionable, that the petitioners would wish it put an end to.

Mr. RICKARDS: There is no power in the Board of Trade to alter the rights of parties *inter se*, except as far as may be required in the interests of the public.

Somerset: On the complaint of a private individual.

Mr. RICKARDS: That private individual is the representative of the public.

● *Somerset*: At best the agreement leaves the petitioners in the position of agents; and agents have no *locus standi*. Neither have contractors. And the possession of facilities over a line carries with it no right to oppose the grant of similar facilities to another company. There is nothing in the agreement to prevent the Evesham company from admitting other companies upon their line.

The CHAIRMAN: What is the difference between the case of a lessee, and that of a company having power to work and maintain the line?

Somerset: The lessee would have an interest

in the land, and could bring an ejectment. The petitioners are simply carriers.

Mr. RICKARDS: They are something more than that; they maintain the line.

Somerset: They only carry passengers by permission of the Evesham company. If Parliament were to refuse us running powers, we could still agree with the Evesham company for the use of their line, and the Midland company could not prevent us from carrying traffic by agreement.

Mr. RICKARDS: They could only prevent anything that would be an infraction of their agreement.

Somerset: And for that they have their remedy at law. This case resembles the *Tooting, Merton, and Wimbledon Bill, 1866* (Smeth. 142).

Locus standi Allowed.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Beale, Marigold, & Beale*.

Petition of (2) the STRATFORD-UPON-AVON RAILWAY COMPANY.

Competition—Rival Routes—Comparative Lengths of—Working Agreement—Double Petitions in same interest.

A railway company petitioned against a bill authorizing the construction of a new line, on the ground that it would afford a competitive route to the town of Birmingham. The distance, however, by the new line would be 3½ miles, and by that now existing 26½ miles. The petitioning company's line was worked under an agreement providing for division of profits, by the Great Western company, which also opposed the bill:

Held, that the petitioners had no *locus standi*.

The petitioners were the owners of a line of railway extending from Hutton to Stratford-upon-Avon, and worked under agreement, providing for a division of earnings, by the Great Western company. The petitioners objected to the line proposed by the bill from Stratford-upon-Avon to Alcester, because the Evesham and Redditch railway, which the new line would join near Alcester, would furnish a new and rival approach to Birmingham.

The *locus standi* of the petitioners was objected to, because (1) no sufficient competition, according to practice, was shown; (2) no lands, &c., of the petitioners, or facilities affecting them, were taken; (3) they had no sufficient interest.

Saunders (for petitioners): The proposed line is unnecessary, and will compete with us.

Mr. RICKARDS: What is the comparative distance between Birmingham and Stratford-upon-Avon by the two routes?

Saunders: By the existing line the distance is 26½ miles; by the new route the distance would

be 34 miles. But the Midland company would have an interest in forcing traffic, coal especially, by the longer route.

The CHAIRMAN: Is the coal traffic to Stratford large?

Saunders: It is of substantial amount. The following cases seem to be in point:—*London and North Western Bill*, 1869 (Cliff. & Steph. 109); *Great Western, &c., Bill*, 1867 (Cliff. & Steph. 97); *Hoylake Railway Bill*, 1866 (Smeth. 151); *North British and Bridge of Allan Bill*, 1866 (ib. 157); *North Kent Railway Bill*, 1865 (ib. 136).

Granville Somerset, Q.C. (for promoters): There is really no ground of opposition; but, if there were, the Great Western railway company also oppose, and through them the interests of the Stratford-upon-Avon company will be well guarded.

The CHAIRMAN: We need not trouble you.

Locus standi Disallowed.

Agents for Petitioners, Hobbes, Slatter, & Hobbes.

COAL OWNERS' ASSOCIATED LONDON RAILWAY BILL.

3rd April, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of the LONDON AND NORTH WESTERN RAILWAY COMPANY.

Canal—Railway—Proposed Power of Making Agreements Between—Mr. Cardwell's Act—Undue Preference to Traders, &c.—Single Trader—Carriers.

In a metropolitan railway bill promoted by certain coal owners, power was taken to make agreements from time to time with the Regent's canal company for the use of the canal and works. The North Western railway company, which had a coal depôt and dock at Camden, making use of the canal from that point for the distribution of its coal traffic, opposed the clause conferring this power, on the ground that under it arrangements might be made between the canal company and the promoters, injuriously affecting North Western traffic. The promoters replied that the petitioners were protected against undue preference in favour of other persons or companies by Mr. Cardwell's Act, and that as single freighters they were, according to precedent, not entitled to be heard:

Held, that the railway company being carriers, not freighters, and being dependent upon

the canal for the conveyance of their coal traffic from Camden, had a *locus standi* against the clause, the Court apparently doubting whether the protection afforded by section 2 of the General Act would not be lost to the petitioners if the promoters received express authority to enter into agreements under the bill.

This was a bill for "making several railways for coal and goods traffic between the Lea Union canal and the Market Rasen branch of the Manchester, Sheffield, and Lincoln railway company, and for conferring powers upon that company and the Great Eastern railway company, with reference to the undertaking, and for other purposes." By Clause 37 it was provided that "the company on the one hand, and the Regent's canal company on the other hand, may from time to time enter into contracts or arrangements with respect to the use of the canal and the works thereof, and the lands attached thereto belonging to the Regent's canal company."

The petitioners alleged that they would be seriously injured if the promoters and the Regent's canal company were empowered to enter into contracts or arrangements, as was proposed by Clause 37; that a very large coal and goods traffic, particularly coal, was brought from Lancashire, Derbyshire, and Staffordshire by the petitioners' railway to Camden, and there distributed by means of the Regent's canal, which was a main outlet into the Thames, and to the depôts, works, and manufactories on, near, and accommodated by that canal; that under the operation of the clause the promoters would be able to obtain the exclusive use of the canal, and make rates and arrangements with the canal company in favour of the traffic conveyed by the intended railways which, if it would not wholly shut out such traffic of the petitioners, would place it at a great disadvantage, and give an undue preference to the coal traffic of the South Yorkshire districts to the injury of the petitioners, of other northern and Staffordshire coal traders, and of the public; and that the outlay incurred by the petitioners in providing terminal and other accommodation there for the distribution of their coal traffic, by means of the Regent's canal, would become useless if the promoters and the canal company were permitted to make contracts and arrangements as proposed by Clause 37.

The *locus standi* of the petitioners was objected to on various grounds, but the only objections material to the issue before the Court were these:—(1) the powers intended to be conferred by the bill do not abrogate or interfere with any existing lawful agreement between the petitioners and the Sheffield railway company, or do not interfere with any such agreement in such a manner as would entitle the petitioners to be heard; (2) the position of the petitioners, or their railway, is not such as would entitle them to be heard against the bill upon the ground of competition; (3) the petitioners are not in-

terested as owners, lessees, or occupiers in the Regent's canal, neither do they allege that they are traders on the canal, and they have not such an interest in it as would entitle them to be heard against the part of the bill relating to the canal; (7) the bill does not confer upon the promoters any power of using the canal to the exclusion of other traders, or for interference with their traffic, and the petitioners in the capacity of traders, assuming them to be such, are not entitled by themselves, and without the concurrence of other traders, to be heard; (8) the petitioners have no such interest as entitles them to be heard consistently with practice.

Mercvether, Q.C. (for petitioners): We ask for a *locus standi* against Clause 37. We have spent £20,000 upon our works at Camden, a part of this expenditure being for a dock which leads into the Regent's canal. At present the canal company have no agreement with any railway company; and if the agreement authorised by the bill should be adverse to our interests, all our expenditure would go for nothing.

Rodwell, Q.C. (for promoters): The petitioners would be entitled to be heard against a sale, an amalgamation or a lease, but the bill merely authorises us to make an agreement, as to which the canal and railway companies would be bound by Mr. Cardwell's Act (17 & 18 Vic., c. 31, s. 2), and could not give undue or unreasonable preference to any person or company.

Mr. RICKARDS: Would not Clause 37 over-ride the General Act, and enable the promoters to acquire the exclusive use of the canal?

Rodwell: I apprehend it would not. Clause 41 of the bill says, that nothing therein contained shall be deemed or construed to exempt the railway from the provisions of any General Act relating to railways now in force, or which may hereafter pass. We therefore take this authority to make an agreement subject to the general law.

Mr. RICKARDS: The General Act says that one company shall not subject another to any undue or unreasonable prejudice or disadvantage. The question is, what is an undue or unreasonable prejudice or disadvantage?

Rodwell: That would be decided by a court of law. Except from the largeness of the business they carry on, the North Western railway company are no more entitled to be heard against this bill than any other coalowners who trade with the north, and who have a depôt and barges at Camden. It is not suggested that there is any competition, and the extent of the business cannot alter the principle upon which a *locus standi* is refused to single freighters. (*Caledonian Railway and Forth and Clyde Navigation Companies Bill*; *Cliff. & Steph. 66.*) The petitioners have no right to represent the case of the general public. They have no exclusive use of the canal, and as freighters they are secure against the grant of any unfair advantage to the coalowners' company over them.

Mr. RICKARDS: The North Western railway company are carriers and not freighters.

Rodwell: Yes, and as carriers they have no right to insist upon traffic being conveyed further when they have discharged the duty of carrying

the traffic up to the dock where this coal depôt is situated.

Mr. RICKARDS: Do they discharge the coals at the dock, or does the canal form a part of their transit?

Mercvether: Our transit ends at the dock; but if we could not send our coal traffic by the canal we should carry no coal on our line.

Rodwell: Another case bearing upon the point at issue here is the *Severn and Wye Railway and Canal Bill*. (*Cliff. & Steph. 74.*) It must be to the interest of the Regent's canal company to carry all the traffic they possibly can. They will not, therefore, be likely to make an agreement which will hamper them in their dealings with so large a customer as the North Western railway company. But if the North Western railway has a *locus standi*, every individual coalowner would be entitled to one; and there is no case in which a single individual who apprehended that he would be injuriously affected by legislation in a case like this has been allowed to be heard.

The CHAIRMAN (after consultation): The *locus standi* of the London and North Western railway company is *Allowed* against Clause 37.

Agents for Bill, *Sherwood & Co.*

Agent for Petitioners, *Blenkinsop.*

EDINBURGH STREET TRAMWAYS BILL

April 3rd, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of JOHN CROALL, and JOHN CROALL AND SONS.

Tramways—Omnibus traffic—Competition with—Apprehended lease by Municipal Corporation—Interference with streets—Obstruction to traffic—33 & 34 Vict., c. 78.

A bill to authorise the construction of certain tramways in Edinburgh and its suburbs was opposed by proprietors of omnibuses on the ground of competition, and also of apprehended interference with the streets and obstruction to traffic. The petitioners alleged that, the bill empowered the corporation to acquire and lease the proposed tramways when constructed, and that their claim to a *locus standi* on all the grounds assigned by them was strengthened by the prospect of competition with the lessees of a public body, who would establish a monopoly by means of the rates, and who possessed the sole control of the street traffic. The petitioners were largely concerned in the omnibus traffic of Edinburgh, and it was

stated that they owned more than half the omnibuses running there :

Held, that petitioners had a *locus standi*, and that the passing of the General Act on tramways does not prejudice the rights of persons to oppose the particular bill on the grounds here alleged.

The bill was one to incorporate a company for the purpose of constructing tramways in Edinburgh, Leith, Portobello, and their respective suburbs, and to confer upon the company and their lessees, and any other parties with whom the company might agree, the exclusive use of these tramways for carriages with flange wheels, or other wheels suitable only to run thereon. It was also proposed by the bill to authorise the company, on the one hand, or any corporation or person, on the other hand, to enter into agreements for the use of the tramways by such other corporation or person.

The petitioners were the owners of extensive coaching establishments in Edinburgh, and in the towns of Leith, Portobello, and other neighbouring places. They stated that they ran various lines of coaches and omnibuses upon the routes along which it was now sought to lay tramways; that they employed a large number of men in the coach and omnibus service, and 50 additional hands, as smiths, coachbuilders, &c., their coach-houses and workshops covering an area of about three acres; that they also had offices and premises in various parts of Edinburgh, Leith, and the neighbouring villages; that their omnibus service was entirely satisfactory to the public, being frequent and regular, with comfortable accommodation and moderate fares; that the construction and use of the tramways sought to be authorised by the bill would interfere very prejudicially with the trade of the petitioners; that the streets along which the tramways would be laid were the most important and crowded thoroughfares in and around Edinburgh; that several of them, moreover, were too narrow and steep for the purpose of tramways, some even now being frequently blocked by the ordinary traffic, and that, if double lines of tramway were laid down, the ordinary traffic would be still more seriously impeded; that the virtual appropriation of a large portion of the public streets for tramway traffic, which would be entirely in the hands of the company or those deriving right from them, would create an unfair and improper competition with the petitioners in the business which they had carried on so long and with such advantage to the public; that, as they were informed and believed, an agreement was in contemplation between the promoters and the Town Council of Edinburgh for the transfer to that body of the proposed tramways, or at least of the power of working, using, or leasing them; and that if this agreement, which the bill would authorise, were carried out, the injustice to the petitioners would

be still greater, for the Town Council would be enabled to employ the public funds and rates to which the petitioners themselves largely contributed as owners and occupiers, in aid of a municipal omnibus undertaking, with which it would then be ruinous for the petitioners to compete; that the corporation would have an additional power of accomplishing this result by means of regulations for the conduct of all street traffic which the Police Acts authorised them to make and enforce; that the petitioners would thus be driven off the road, and a monopoly of omnibus traffic would be created to the great loss and injury of the petitioners and of the public.

The *locus standi* of the petitioners was objected to, because (1) no such competition would result from the proposed works, as according to practice, entitles the petitioners to be heard; (2) no land, &c., of the petitioners will be taken or affected; (3) the petitioners have no interest entitling them to be heard; (4) as regards the petitioners John Croall and Sons, the petition is not signed in accordance with the rules and practice of Parliament.

The last objection was waived by the promoters.

Johnson, Q.C. (for petitioners): We claim to appear on the ground of obstruction to our traffic, and also on the ground of competition. Here the natural guardians of the streets desire that these tramways shall be laid, and even propose to work them. In any case our traffic will be obstructed; but if the tramways are transferred to the corporation we shall have no redress, and the corporation will compete with us by the aid of rates towards which we contribute. The authorities are clear in our favour. (*Liverpool Tramways Bill*, 1868; *Cliff. and Steph.* 120. *London Street Tramways Bill*, 1870; 2 *Cliff. and Steph.* 87.)

Clerk, Q.C. (for promoters): There can be no question of competition upon a bill of this kind. The petitioners are now licensed to run a certain number of omnibuses in different parts of Edinburgh. Any other person might get a similar license to-morrow, and compete with them in the same way as they themselves competed with and displaced the "noddies." In the *Liverpool Tramways Bill*, 1868, it was exceedingly doubtful at that time what the effect of tramways would be upon the traffic of the streets. There had been no general inquiry then, and the petition was principally based upon alleged interference with, and stoppage of, traffic in the narrow streets of Liverpool. Again, in the *London Street Tramways Bill*, 1870, the case also rested upon interference with streets rather than upon competition. Parliament having now sanctioned the principle of tramways, the question of competition between omnibuses and tramways cannot be raised, just as one body of coach proprietors cannot come and oppose another body, because each has the free use of the streets.

Mr. RICKARDS: I do not think you can say that the passing of the General Act gave anything more than a general sanction to tramways as a system. The Act does not exclude parties from going into the question whether any particular line of tramways, in any particular town

or place, would be detrimental to the general traffic.

Clerk: No; but if the street is free to all, the fact of a new body coming in to use that street can give no *locus standi* to those using it at present.

Mr. RICKARDS: But special advantages and privileges are proposed to be given to these new comers.

Clerk: At the same time, unless those special privileges prevent the user of the streets by the other party, there can be no right to oppose on the ground of competition. By the Act of last year, Parliament laid down the principle that the establishment of tramways was not injurious to the general traffic. Therefore, the question of competition cannot arise in these cases, whatever else may arise. As to the alleged interference with the streets, the people who would suffer most are the frontagers who are allowed to appear under the S. O.; but they do not oppose, nor do the cabowners or the local authority appear. The amount of business done by the petitioners is not such as to entitle them to be heard in respect of interference with the streets.

Mr. RICKARDS: Are there other omnibus proprietors on the same line?

Clerk: Yes. With respect to the apprehended transfer of the tramways to the corporation of Edinburgh, there is nothing in the bill authorising such a transfer; for the words in section 12, "The company on the one hand, and any other company, or corporation, or person, on the other hand, from time to time, may enter into agreements," cannot be taken to mean the municipal corporation. Even supposing they bear such a meaning, the corporation can only enter into such contracts and agreements as are defined in the Tramways Act of last year (incorporated in the bill), i.e., the corporation may lease the tramway, or may take tolls for it; but they are not allowed to run carriages themselves on it; or to take tolls in respect of the use of such carriages (33 and 34 Vic., cap. 78, section 19).

Mr. RICKARDS: Though they may not work the line themselves, they may do it through their lessee.

Clerk: No doubt; but the allegation that they might apply the public funds in aid of their own omnibus undertaking, with which it would be ruinous for the petitioners to compete, falls to the ground.

Mr. RICKARDS: The corporation would be interested in working the tramway so far as they are lessors.

Clerk: Quite independently of this clause, the local authority might take possession of the tramway upon giving the requisite notice, and then they would have the powers conferred upon them by the General Act.

Mr. RICKARDS: But it is only by passing this special Act applicable to Edinburgh that you bring the General Act into operation.

Clerk: The petitioners must show some special reason why the General Act should not be applied in Edinburgh. They have shown none.

Johnson: With reference to the amount of our

business, we have more than half the omnibuses running in Edinburgh.

The CHAIRMAN (after deliberation): The *locus standi* of the petitioners is *Allowed*.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Grahames & Wardlaw.*

SALFORD BOROUGH DRAINAGE AND IMPROVEMENT BILL.

8rd April, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petitions of (1) JOHN DUGDALE; (2) Sir HUMPHREY DE TRAFFORD, Bart.

Sewage — Effluent Water — Alleged Nuisance — Municipal Corporation — Landowners — Injurious Affected — Prior Legislation.

A bill promoted by a municipal corporation, among other things to sanction the taking of lands for the purposes of a sewage reservoir, was opposed by two neighbouring landowners, whose land was not taken, but who objected to the nuisance about to be created. It appeared, however, that the powers of constructing sewers, and of collecting and disposing of sewage, had been conferred on the corporation, in general terms, by a prior Act of 1862; and the bill merely defined the site which had been chosen for the works, and gave facilities for its acquisition: *Held*, that the petitioners fell within the general rule as to contiguous landowners injuriously affected, and had no *locus standi*.

This was a bill, among other objects, to take lands for the purposes of a sewage reservoir, from whence the effluent water was to be conveyed in pipes to the river Irwell.

The petitioners were owners of land in the vicinity of the site proposed, and objected to the nuisance about to be created.

The *locus standi* of John Dugdale was objected to, because (A) no lands, &c., of his would be taken or interfered with under the bill; (B) if injured at all (which was denied), it was not by the bill, but by prior legislation in 1862, which had authorised these very sewerage works—the discharge of sewage into the river Irwell, and the collection and sale of the sewage for agricultural and other purposes. If injured, the petitioner should accordingly seek compensation under the former Act; (C) the injury apprehended was too remote and uncertain; (D) he was a single individual, not representing the inhabitants of any town or district injuriously affected by the bill, which was promoted by the corporation of Sal-

ford; (E) no sufficient grievance or injury was disclosed entitling him to a hearing according to practice.

Similar objections in all respects were taken to the *locus standi* of Sir H. De Trafford.

Saunders (for both petitioners): These gentlemen are owners in fee of lands in the borough of Salford, within a few hundred yards of the sewage tanks proposed, and adjoining the river into which the sewage is ultimately to flow. These works must affect both the health of the district and the value of property. Though the Improvement Act of 1862 authorised these works in general terms, there was no specific power to take lands, and the actual site is now indicated for the first time. We shall be as much injured as if our property were taken. There are no decisions against our claim.

Mr. RICKARDS: And none in your favour, I think? There are hundreds of cases in which landowners, within a short distance of proposed works from which they apprehended nuisance, have not been allowed to be heard.

Saunders: The nuisance from sewage works is infinitely greater than any arising from gas-works or from a railway. Had these gentlemen opposed the Act of 1862, they would have been told to wait until they saw what lands were actually going to be taken.

Clerk, Q.C. (for promoters): Section 140 of the Act of 1862 gives power to the corporation to make sewers, and adds, "for the purposes assigned they may carry and construct any works through, under, or upon any lands; and they may remove all obstructions, and may cause such sewers to communicate with and empty themselves into any public river or watercourse, and they may continue such sewers to the most convenient site for the collection and sale of the sewage for agricultural or other purposes," but so as not to constitute a nuisance. There is no limit to the area, and no site selected. This bill is introduced merely to give us compulsory power of purchasing a particular piece of land; if we had acquired the same, or any other piece of land by agreement, the petitioners could have done nothing to prevent it. Our general powers enable us to construct sewers anywhere, and carry sewage to any place we may select. [He was then stopped.]

Locus standi Disallowed.

Agent for both Petitioners, *Byrne*.

Agent for Bill, *Newall*.

Petition of (3) LONDON AND NORTH WESTERN RAILWAY COMPANY.

Sewage Works—Municipal Corporation—Railway Company—Prior Legislation—Saving Clause—Acts read as one.

Against the same sewage bill a railway company traversing the borough petitioned, on the

ground of apprehended injury to their line, urging that, as they had obtained a saving clause in the Act of 1862, they were more favourably circumstanced than the petitioning landowners. The Acts, however, were to be read as one; and thus with the derived powers the protection was likewise carried on and continued:

Held (the petitioners themselves assenting), that they were not entitled to a *locus standi*.

Merewether, Q.C.: Our railways traverse the borough of Salford for a distance of two miles; and the very sweeping powers as to entry upon lands, construction of sewers, &c., taken by the corporation in this bill, threaten us seriously at various points where sewers cross our line. We appeared in 1862, and procured the insertion in that Act of a clause preserving our rights. We should be present also on this occasion, to see that nothing is done to our injury. Otherwise, they might take a house or a piece of land near our station, and deposit the sewage there.

Mr. RICKARDS: You would be then in the same position as those contiguous landowners who have no *locus standi*.

Merewether: But if the promoters obtain these extended powers, they will over-ride our saving clause.

Clerk, Q.C. (for promoters): The only extended power we seek is the acquiring of a piece of land on which to erect a tank. The powers complained of exist, at this moment, under the former Acts. These Acts are to be read as one with this bill, including, of course, the saving clause.

Merewether: If that be so, I do not press my claim further.

Locus standi Disallowed.

Agent for Petitioners, *Blenkinsop*.

ABERDEEN MUNICIPALITY EXTENSION BILL.

18th April, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of SHIPOWNERS and RATEPAYERS of ABERDEEN.

Practice—Objections—Insufficiency of—Petition—Alleged Vagueness in.

The rule that objections must be specific is not affected by an allegation (*arguendo*) of corresponding vagueness in the petition. A mere objection that petitioners did not state that they had, and in fact did not possess, "any right, property, or interest" (*sic*), and that they stated no grounds entitling

them to a hearing, was held by the Court to be not sufficiently specific.

Under the local Act relating to the harbour of Aberdeen, the Commissioners for carrying that Act into execution were to be the Lord Provost, Magistrates, and Town Council of Aberdeen, consisting of 19 members, and 21 persons to be elected by the burgesses of guild, members of the incorporated trades, and persons called ship-owners. The bill proposed (*inter alia*) to increase the number of the town council to 24; and the petitioners complained that the construction of the harbour trust would thereby be changed, and the relative proportions of elected and non-elected Commissioners would be altered, greatly to the prejudice of the petitioners, who formed part of the electoral body.

The *locus standi* of the petitioners was objected to, because "the petitioners do not state that they have, nor do they in fact possess, any right, property, or interest; neither are any grounds stated in the petition which entitle them, according to precedent and the usage of Parliament, to be heard upon their petition against the preamble or clauses of the bill."

Maclaurin (Parliamentary Agent, for petitioners): The notice of objection is not in conformity with the rules of the Referees. The promoters must set forth the grounds on which they object, and the notice contains no statement whatever of any grounds of objection.

Cripps, Q.C. (for promoters): The petition is open to the same objection of vagueness which is raised to our notice of objection. Every petition must contain the specific grounds upon which the petitioners claim to be heard. If a petition is so meagre as not to allege such grounds, we can only point out that there is that defect in the petition; the fault is in the petition, not in the objection to it. Taking the petition as it stands, I say, within that petition, point out, if you can, anything which entitles you to be heard. The greater part of the petition is history. It states facts which I do not contravene in any way, but admitting those facts, I say that it discloses no ground for a *locus standi*.

The CHAIRMAN (Without calling on Maclaurin to enter into the merits): We think the *locus standi* must be allowed in this case. The objection to the *locus standi* is not sufficiently specific.

Locus standi Allowed.

Agents for Bill, Martin & Leslie.

Agents for Petitioners, Loch & Maclaurin.

DUNDEE POLICE AND IMPROVEMENT BILL.

18th April, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of (1) the CALEDONIAN RAILWAY COMPANY.

Improvement Bill—Sewage Works—Railway—Interference with—Rating—Prior Legislation—Omnibus Bills—Landowner—General locus standi—Practice.

An improvement bill promoted by a body of local Commissioners for various purposes, one of which was to authorise the construction of sewers in a particular district, was opposed by a railway company, whose line would be crossed by one of these sewers. It was strongly urged that this circumstance gave the petitioners no right to attack, under their petition, the system of rating in force in the borough for upwards of 20 years, a period longer than the whole connection of the railway with the borough:

Held, however, that the petitioners, being landowners, whose land was taken, were entitled to a general *locus standi*; and that it would be for the Committee, and not for the Referees, to prevent the petitioners from travelling beyond the Bill and impugning past legislation.

(*Per Cur.*) It is "the common law of Parliament that a landowner has a right to be heard against any bill whatever, under which it is proposed to take or interfere with his property."

It was "an old rule, which prevailed long before the Referees were established, that wherever the land of a person is taken or touched, he has a *locus standi* against the whole bill."

"A railway company is not less a landowner than an individual. Independently of the S. O., the company, as a landowner, has a landowner's right to be heard."

"The Court never limits a *locus standi* to parts of a petition."

The bill was one for giving powers to the Police Commissioners of Dundee "to construct new streets, and widen, alter, divert, and improve existing streets; to alter levels of existing streets; to construct sewers, and provide for utilization of sewage; to provide public markets and public parks; to purchase lands and houses by compulsion; to stop or shut up and appropriate existing streets; opening up densely populated localities; to remove existing houses and to erect houses and buildings, and to effect other improvements; to sell and lease lands and houses; to build, maintain, let, and sell houses for use and accommodation of labouring classes; to borrow money and apply funds; to levy rates and assessments; to alter and affect liability for

assessments; to alter time and manner of repaying borrowed money; sinking funds; to regulate dimensions, design, and other particulars of buildings; to regulate new streets; to improve sanitary and other arrangements; to confer additional powers and jurisdiction upon the Commissioners and police magistrates; to improve police of burgh; vesting of dust, &c., in Commissioners; to make bye-laws; alteration of wards for municipal election purposes; amendment, repeal, and enlargement of Acts; incorporation of public and other Acts or parts thereof; and other powers and purposes."

The petitioners complained that, in the construction of a proposed outfall sewer, portions of their land would be taken and their railway interfered with. But the remaining paragraphs of their petition dealt exclusively with the expenditure proposed to be incurred, and the heavy burdens entailed upon the railway company, which did not enjoy the protection of the modern assessment at one-fourth.

The *locus standi* of the petitioners was objected to, because (1) no new charge was thrown by assessment or otherwise on the property of the petitioners within the burgh, and, therefore, they ought not to be heard on the subject of rating; (2) they were not entitled to complain of past legislation, but should be limited in their opposition to sewers or sewage works interfering with their property; (3) no power was sought to levy any other rates than those in force at the time the petitioners acquired their property in the burgh; (4) the bill was promoted by the Commissioners of Police of Dundee, who acted in the name and on behalf of all the community, and of all the ratepayers.

Venables, Q.C. (for petitioners): We are landowners, and among other powers sought by the bill is that of constructing an outfall sewer which will cross our Dundee and Newtyle branch. Our statement that portions of our lands will be taken compulsorily, is not traversed. We are entitled to an unlimited *locus standi*. (*London and North Western Bill*, 1868; *Cliff. and Steph.* 62.)

Mr. RICKARDS: They merely carry a sewer through your land?

Venables: But there is nothing to compel them to take the sewer in a tunnel—they might bring it to the surface. They have given us notice. Another case in point is the *Caledonian Railway (Greenock and Gourock) Bill*, 1866. (*Smeth.* 106.) [He was then stopped.]

Clerk, Q.C. (for promoters): In the case of a railway bill, no doubt you are controlled by the S. O., and must grant a general *locus standi* where land is taken. But, concerning improvement bills, your discretion is not similarly fettered. In this bill the construction of sewers is quite an incidental matter, and relates only to the second or Lochie district, and not to Dundee. Different rates and different assessments are applicable to these two districts. The Caledonian company, no doubt, have a right to see that they are properly protected with regard to those sewers; but the question is, whether they are entitled to re-arrange, if they can, the whole system of assessments in the town of Dundee. These sewage works might have been the subject of a separate bill.

Mr. RICKARDS: You cannot make out this to be any more than an omnibus bill?

Clerk: But the principles of *locus standi*, affecting omnibus bills, have never been applied to improvement bills. I refer you to the decision in the *Hull Docks Bill*, 1867. (*Cliff. & Steph.* 137.)

Mr. RICKARDS: In that case, the petitioners do not seem to have alleged in their petition that they were landowners?

Clerk: There is also the case of the *Liverpool Improvement Bill*, 1867; *Petition of Lancashire and Yorkshire Railway*. (*Cliff. & Steph.* 48.)

Mr. RICKARDS: There a general power was taken to stop up bridges. The petitioners had bridges, but there was no notice to them as landowners, and the case apparently was not argued on landowning grounds?

Clerk: You have never laid down the principle that under the S. O. parties in the position of the petitioners might be heard against an improvement bill, to contend that the rating ought to be altered.

Mr. RICKARDS: I understand *Mr. Venables* not to rely only on the S. O., but upon the common law of Parliament, that a landowner has a right to be heard against any bill whatsoever, under which it is proposed to take or interfere with his property?

Clerk: That may be a sound principle where the bill has one object, which is the case of a railway bill.

Mr. RICKARDS: The *London and North Western* case was argued, not on the S. O., but upon the right of a landowner to be heard against an omnibus bill.

The *CHAIRMAN*: In the *Liverpool Improvement Bill*, 1867 (*Cliff. & Steph.* 49), the *locus standi*, as a landowner, of the Marquis of Salisbury, was allowed against the whole bill, notwithstanding that the objection which you now rely upon was taken.

Clerk: There was not a clause in that bill which did not affect the interests of the Marquis of Salisbury. Nine-tenths of this bill do not affect the Caledonian; but if you let them in generally, they can go into allegations, upon which you would refuse them a *locus standi* if they stood by themselves.

Mr. RICKARDS: The *London and North Western Bill* was an omnibus bill applying to various parts of their system. Therefore, the interests of the petitioners were quite unconnected with all the other parts of the bill which did not affect their property. But in that case the Referees found themselves bound to act upon the old rule, which prevailed long before the Referees were established, that whenever the land of a person is taken or touched, he has a *locus standi* against the whole bill. It was mentioned in that case, that a proposal was made at one time to the House of Commons to limit the *locus standi* of landowners, but it was not found expedient to proceed with it.

Clerk: Before that S. O. as to railways was passed, one Committee used to limit the opposition of a railway company simply to the physical effects of a junction or interference with its line, whilst other Committees would admit railway companies generally, against the bill, as a whole.

It was to establish uniformity of practice that that S.O. was passed about 15 years ago; and it is upon the principle there laid down that you have since allowed railway companies to be heard.

Mr. RICKARDS: We do not consider a railway company less a landowner than an individual. If you take any of the land of a railway company, quite independently of the S. O., that company, as a landowner, has a landowner's right to be heard?

Clerk: A landowner may properly be heard against the whole of a railway bill, because he cannot perhaps save his land without showing that the railway is defective in many of its parts; but a general improvement bill, having divers objects, stands on a different ground. A landowner affected by one of its proposals ought not to be heard as to matters that took place 20 years ago.

Mr. RICKARDS: It will be for the Committee to restrict the petitioners; all we have to do, is to decide whether they have a general *locus standi* against the preamble and clauses.

Clerk: I submit that you can equally restrict them.

Mr. RICKARDS: You ask us to say that they should be heard against the whole bill, but only on certain allegations in their petition?

Clerk: Yes; because four-fifths of the petition have no reference to any contents of the bill. When we go before the Committee, they will say—this has been before the Referees, the parties have been admitted generally, and they are accordingly at liberty to go into any allegation contained in the petition.

Mr. RICKARDS: We must assume that if they attempt to urge anything before the Committee, having no bearing upon the provisions of this bill, they will be stopped. We cannot limit the discretion of the Committee. The petition is one against this bill, and they cannot upon it be allowed to go into former Acts of Parliament.

Clerk: They will, unless you exclude them.

Mr. RICKARDS: We never limit a *locus standi* to parts of a petition.

Clerk: If, in every case where a small portion of the land of a landowner, or of a railway company, may be affected by an improvement bill, the different parts of which are for entirely different objects, you consider yourselves bound to give a *locus standi* against the whole bill, it is idle for me to contest the matter further.

Locus standi Allowed.

Agent for Bill, Robertson.

Agents for Petitioners, Grahames & Wardlaw.

Petition of (2) DUNDEE HARBOUR TRUSTEES.

Improvement Bill—Rival Jurisdictions—Conflicting Provisions—Saving Clause—Insufficiency of.

A bill, for the general improvement of a burgh, promoted by a body of local Commissioners,

contained clauses vesting in them all refuse, &c., made or found within the burgh. The same property, however, was claimed by a body of harbour trustees under their local Acts: and they accordingly opposed the bill. The construction of existing statutes was doubtful: and a clause, expressly saving the rights of the harbour trustees, was inserted in the bill:

Held, however, that as the saving clause directly conflicted with the earlier clause, vesting this same property in the promoters, the petitioners were entitled to be heard against those clauses of the bill relating to refuse.

The petitioners were members of a public trust, and the harbour and docks were within the municipal boundary. Under various local Acts, all "fulzie, soil, dirt, ashes, &c." found within the precincts of the harbour and docks, were vested in the trustees, and produced a revenue of £400 a year. A legal doubt, however, had arisen whether, under the General Police and Improvement (Scotland) Act, 1862, those local Acts had not been so far altered as to vest this property in the promoters. And the doubt was reflected in the bill, which (by clause 136) vested all fulzie, &c., "made or found within the burgh" in the promoters, whilst (by clause 185) the "rights, powers, privileges, and authority" of the harbour trustees were professedly saved in express terms.

The *locus standi* of the petitioners was objected to, because (1) the bill contained no power or right to take or affect any rights, property, powers, or privileges belonging to, conferred upon, vested in, or exercised by them; (2) it did not alter or repeal any statutory provision in force for their protection or benefit; (3) all powers, rights, and privileges conferred upon, or vested in them by the statute, under which they acted, or otherwise, were saved and reserved by section 185; (4) no facts or reasons were stated which, according to practice, entitled them to be heard.

J. Ineson, Q.C. (for petitioners): The saving clause is wholly ineffective. What the bill deals with is not a "power" or "privilege," but a right of property vested in us by special enactment. If there is even a doubt whether our rights are saved, this is not the tribunal to determine it.

Clerk, Q.C. (for promoters): The whole Act must be read together; and what can be a more express saving than Clause 185? The question is one for the legal tribunals. But the petitioners are seeking to get a Parliamentary decision conferring additional rights upon them.

Mr. RICKARDS: The object of a saving clause generally is to obviate any indirect effect which the previous clauses might have. But here the two clauses seem to be absolutely contradictory and irreconcilable. First, there is what amounts to a direct alteration of the rights of the petitioners, followed by a saving of them.

The COURT: The *locus standi* of the petitioners is *Allowed* against the clauses of the bill relating to refuse.

Agents for Petitioners, *Loch & Maclaurin*.

VALE OF CLYDE TRAMWAYS BILL.

18th April, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of (1) the CORPORATION and BOARD of POLICE of GLASGOW.

Tramway Bill—Suburban lines—Connection with tramways in town—Municipal Corporation—Right of, to oppose tramways beyond its jurisdiction—Agreement.

A tramway company promoted a scheme of additional tramways, some within, but the greater part outside the city of Glasgow. The corporation of Glasgow, exercising an option contained in the original Act, were in possession of the existing tramway system which they had leased on favourable terms. They now opposed the bill on the ground that the new lines would communicate with and form an integral part of the existing system, that their working by an independent company would not be for the convenience of the local and suburban traffic, and that the whole ought to be under one undivided control and management, though the additional tramways might extend into the districts of other local authorities:

Held, that the corporation had a *locus standi* against such portion only of the tramway scheme as was situated within their own burgh.

The bill was one to authorise the construction of street tramways in certain parts of the city of Glasgow and its suburbs, and for other purposes; the tramways proposed being partly within and partly without the jurisdiction of the corporation.

The petitioners stated that under an Act of 1870, authorising the construction of tramways in Glasgow and the suburbs, the promoters gave to the corporation an option of substituting themselves for the company—an option which the corporation had exercised; that the promoters previously agreed that, if the corporation so elected, they would not apply for any further Parliamentary powers, "either to alter or amend the Act," or for a Provisional Order, without the consent of the

corporation, the object of the corporation in so stipulating being, that any extension of the lines authorised in 1870, for the accommodation of the suburban districts, should be made by them; that, notwithstanding this agreement, the present bill was promoted, substantially by the same parties, and tramways were proposed, of which one was a line within the city boundary, continuing a tramway sanctioned last year, and two others commencing at the city boundary; that under the Act of 1870, the corporation were not only authorised to construct tramways within the city, but also for some distance beyond, so as to render the tramway system complete for the suburban traffic; that under the bill the promoters would be authorised to construct tramways interfering with the proper and efficient working and development of the tramway system of the corporation, and inconsistent with the agreement already recited, which was confirmed by the Act of 1870; that the corporation had leased the tramways authorised by that Act, having made very favourable terms in respect of fares and accommodation, but the existence of an independent company might give rise to higher fares upon the new system, and to much public inconvenience; and that the persons to whom the existing lines were leased were the principal promoters of the Act of 1870, who had agreed to lease and work any extension of those tramways which the corporation might construct.

The *locus standi* of the Corporation and Board of Police was objected to, because (1) several tramways are proposed in the bill, but the only tramways situated within the jurisdiction of the petitioners will be those respectively numbered 1 and 1a; (2) the rights, property, and interests of the petitioners in the other tramways proposed will not be interfered with; (3) the petitioners are not entitled, according to practice, to be heard, except against tramways 1 and 1a.

Clerk, Q.C. (for petitioners): We oppose the bill, first, because it is promoted inconsistently with the stipulations of the agreement come to last year, the substantial promoters of the bill (though not named in it) being those who executed the agreement of 1870, and bound themselves not to apply to Parliament without the consent of the corporation.

Mr. RICKARDS: The persons mentioned in this bill are not the persons who signed the agreement.

Clerk: But they are some of the promoters of the bill of 1870, and the names of some of them certainly appear in that bill. As a matter of fact, the real promoters of the present bill were those who signed the scheduled agreement, and, therefore, we have a right to appear against the whole scheme, to prevent a breach of good faith. Secondly, we are entitled to oppose the scheme, because the proposed tramways, though laid down as suburban lines, communicate with those in the city of Glasgow, and ought therefore to be under one undivided control and management. The scheme of tramways in Glasgow and its suburbs must be treated as a whole. If the lines now contemplated had been projected as one entire scheme along with those authorised in 1870, we should have been

heard against them; and surely it cannot be said that where tramways are continuous, we may be heard against one portion, but not against another, because it may extend beyond our boundary. Thirdly, we are entitled to appear against the two lines to Govan and towards Paisley, on the technical ground that both commence within our boundary, though they extend beyond it.

Cripps, Q.C. (for promoters): Under the General Tramway Act, nobody can put down tramways in Glasgow, except the petitioners, or persons authorised by them; and in like manner, outside the city of Glasgow, there are other local authorities who alone can put down, or authorise other persons to put down tramways. The Town Council accordingly have an undoubted *locus standi* against tramways 1 and 1a within the city; but what we are proposing is a system of tramways 18 miles in length, along the southern shore of the Clyde, all the way to Greenock. The corporation of Glasgow cannot have any right to interfere with what we are going to do within the jurisdiction of other local authorities entirely independent of them. They say this is a breach of an agreement. Even supposing the promoters of this bill were the same persons who obtained the Act of last year, we are not applying for Parliamentary power to alter or amend that Act. We do not propose to alter one of the tramways thereby established in Glasgow. It is true that the system handed over to the corporation last year does go beyond their own boundaries; they could not have gone there as the corporation, but the promoters got the line and handed it over to them. And, though in two directions the tramway system of the corporation passes the city boundaries, that is not at all the direction in which this line goes. Supposing the corporation want a suburban line, they cannot construct it without the consent of the other local authorities. Moreover, they do not say they are going to apply for powers to construct a tramway in this direction. Their *locus standi* ought, therefore, to be limited to the tramways within their territory.

The CHAIRMAN: The *locus standi* of the corporation is *Allowed* against so much of the proposed tramways as will be situated within the municipal boundary of the city of Glasgow.

Agents for Bill, *Martin & Leslie.*

Agents for Corporation, *Simson & Wakeford.*

Petition of (2) the GLASGOW AND SOUTH WESTERN AND CALEDONIAN RAILWAY COMPANIES, AND THE STATUTORY COMMITTEE OF THE TWO COMPANIES APPOINTED TO MANAGE THE JOINT LINE OF RAILWAY BETWEEN GLASGOW AND PAISLEY, AND BRANCH TO GOVAN.

Tramways—Railway Company—Interference with Railway Bridges—S. O. as to—Applied to Tramway Company—"Taking or Using Lands"—Meaning of—Right of Railway Company in Solum of over-bridges—Mortgagees of Tolls.

The bill was also opposed on a joint petition by two railway companies on the ground of competition, as mortgagees of tolls, and of alleged interference with over-bridges, counsel contending that a tramway was a railway bill within the meaning of the S. O. (as to use of land, accommodations, &c.), and that the crossing of an over-railway bridge by the promoters, gave the petitioners a general *locus standi* under this S. O.:

Held, that the petitioners could only be heard against such portions of the bill as might authorise interference with bridges and works.

Semble: That mortgagees of tolls on a turnpike road, which may be affected by a new railway, are no longer heard in opposition to the bill authorising the construction of the line.

The petitioning railway companies opposed the construction of the tramways, authorised by the bill, on the ground of interference with their works, and of competition: also as creditors of certain turnpike roads traversed by the tramways. It was conceded that they had a *locus standi* as to interference by the tramways with their bridges. But their general right to be heard was objected to, because (1) no land or property of the petitioners will be taken; (2) their rights, property, and interests are not interfered with; (3) their interests as alleged creditors on the roads specified in the petition are represented by the road trustees, whose *locus standi* is admitted; (4) the petitioners are not entitled to be heard upon the ground of competition; (5) nor according to practice.

Venables, Q.C. (for the railway companies): We say that the property of the railway and canal bridges, over which the tramways will cross, being vested in us, we have a general and not merely a limited *locus standi* against the bill on that ground alone. We repair the fabric of these bridges; the road authorities repair the roadway. The S. O. says: "Where a railway bill contains provisions for taking or using any part of the lands, railway, stations, or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition against the preamble and clauses of such bill." Therefore, if this is a railway bill, the S. O. gives us a *locus standi*, for the bill contains provisions for using a part of the lands of our railway. I will not contend that they take the lands, because they only take an easement over them; but they take power over our lands. The bridges are undoubtedly "accommodations," but I take them as "lands."

Mr. RICKARDS: Do you say that the bridge which carries the road over the railway is the land of the railway company?

Venables: Yes; for though the road is repaired

by the road authority, so it might be if a road were made on private property. Somebody may be liable to repair the road over your field, and yet you may retain the land. I will not contend that we come in generally as landowners, but I say that though other people may be bound to repair the road, the railway company have the freehold of the property from the sky downwards; it is their land; and, therefore, under the words of this S. O., they are entitled to be heard. This S. O. is intended to meet cases in which land is not taken but only used.

The CHAIRMAN: *Cujus est solum, ejus est usque ad cælum*; but here there is one man's land above another's?

Venables: No; for the thin strip of soil on the bridge is not the property of the road trustees, though they may be bound to repair it. The land belongs to the railway company. Some bridges have nothing on them except the concrete laid by the railway company. In such cases there is no substance belonging to the road authorities; physically, there is nothing between the *solum* and the *cælum*.

Mr. RICKARDS: In the case of a tunnel, is the supersoil in the company?

Venables: Yes, unless it is excepted, and a landowner has a *locus standi* in regard to a tunnel under his land.

Mr. RICKARDS: In a case where a railway company is authorised to carry a line under an existing road, does that vest the road itself in the railway company?

Venables: Yes; because the bridge is the soil of the railway company. Certain people have the liability to repair the road, and the right to come upon it, but they are not freeholders. Land is not divisible into these horizontal strata for the purposes of ownership.

The CHAIRMAN: In the case of a tunnel, the landowner has the land *usque ad cælum*, and the railway company has it downwards?

Venables: That may be so by agreement; but in the case of a road over land, nothing is more common than for the land to be in the landowner.

Mr. RICKARDS: The question is whether an Act which authorises a bridge to be made to carry a road over a railway, vests in the railway company the soil of that road?

Venables: The company would certainly have to buy that piece of land, as well as all the rest of the land, from the former owner of the soil; they would reconvey it to nobody; and therefore they would remain the owners of the soil on which the bridge is built.

Mr. RICKARDS: They are placed in the shoes of the landowner?

Venables: Yes; the landowner was the owner of the soil, and they pay him for that part of his land over which the road runs. When the bridge is made upon that land, it is a mere accident that some macadam is laid upon the bridge for the roadway. There may be nothing of the kind. Suppose there was merely a plank over which people had a right to pass, you would have no stratum between the *solum* and the *cælum*.

Mr. RICKARDS: You say that a bridge made by the railway company, not for their own purposes

but for the road traffic, is yet a part of the land, stations, and accommodations of the railway company?

Venables: Yes; they have bought it from the landowner; they have not reconveyed it, nor by any process of law has it been conveyed to anybody else. The public have merely an easement over it. Therefore the promoters would use the "land" of the railway company within the terms of the S. O., if they went over the bridge. The trustees would have the right to interfere if they injured the roadway; but the trustees would care nothing further about it; they do not represent the freeholders who have the land.

Mr. RICKARDS: When a railway company has to purchase land from a landowner, on either side of a public road, does it also purchase the soil on which the road runs?

Venables: I am assured that such is the case. We pay just as much for the public road as we do for any other part of the land purchased. In law the roadway is our freehold, and that freehold right extends above as well as below.

Mr. RICKARDS: The object of the S. O. seems to be to allow the railway company to be heard against a bill for the purpose of protecting works and premises which may be interfered with. It seems to be rather beyond the intention of the S. O., that supposing the bill merely interfered with the right of the public to the use of the roadway, the railway company, who will not be affected by it, should have the right of being heard.

Venables: Observe the largeness of the words, whatever may have been the intention of Parliament in adopting the S. O. The words are, "taking or using any part of the lands;" and thereupon an opposing company are entitled to be heard against both preamble and clauses, that is, all the clauses which concern them in the bill. Take the common case of a high signal post close to a bridge, and rising perhaps 10 or 20 feet higher than the roadway of the bridge. The post rests on the soil of the permanent way below, and nobody can dispute that every inch of the course of that post, vertically to the top, represents the property of the railway. If they had not a right from the *solum usque ad cælum* they could not erect such a post, and when the road authorities came to repair the roadway they might cut the post in two. There the railway company exercise their vertical right of property close to the roadway of the bridge, and there can be no reason why the space six feet off the post, which is occupied by the roadway of the bridge, should not also be in the railway company.

The CHAIRMAN: Might they plant the post in the roadway itself, if it did not cause any annoyance or nuisance in the road?

Venables: No doubt they might. We may put a lamp on the parapet of the bridge; we may run up any erection there without opposition.

Mr. RICKARDS: Or put up a long placard?

Venables: Yes. When a road bridge is carried over the railway, we have to buy a large piece of land to make the approaches and the slopes, and we have to buy the whole; there is no reservation of a horizontal section of it to —

body else. My argument, so far, turns on the definition of a "Railway bill" in the S. O. I submit that this is a railway bill by the practice of the House. S. O. 105 provides that "printed copies of all private bills, not being railway or canal bills, shall be laid before the committee of selection, and printed copies of railway and canal bills before the general committee on railway and canal bills." The general committee consider these tramway bills as coming within their jurisdiction; and as tramway bills cannot be canal bills they must be railway bills. Indeed, tramways are the same things as railways, except that in one case the vehicle is drawn by horses, and in the other by locomotives. Again, both the railway companies are mortgagees of tolls upon the roads, on which the tramways will be laid. I am not going to contend that, according to the modern practice of Parliament, owners of the tolls can ordinarily be heard on the ground that those tolls may be diminished by competition. It has been decided that they cannot; but this is not the case of the competition of somebody who runs a better mode of conveyance alongside our road. It is the case of somebody who takes a road, of the tolls of which we are mortgagees, and makes use of that very road to diminish the tolls.

Mr. RICKARDS: The tramway carriages pay tolls?

Venables: Yes; but we complain that there will be a diminution of tolls on the road. It may be said that we are represented by the trustees, but the trustees are the debtors, and we are the creditors. They have no interest in seeing to the payment of our debt. Moreover, we do not stand in the position of ordinary mortgagees, who might be said to be technically represented and protected by the trustees, because the Acts provide that we shall appoint "a member of the board of directors to attend the several meetings of the trustees of the respective districts of roads, and to vote as a trustee in the management of the same, and, further, to exercise a veto on any resolution occasioning an extraordinary expenditure or diminution of the annual revenue thereof." So that, as against anything done by the road trustees tending to diminish their receipts without Parliamentary authority, we have a simple and effectual remedy: we can veto it. Can it be said that, when we have such a right to protect our interests, we ought not to have a *locus standi* to protect ourselves against injuries inflicted in virtue of Parliamentary powers?

Mr. RICKARDS: The veto appears to be limited to a resolution occasioning an extra expenditure or diminution of revenue?

Venables: We say that this very thing which is now proposed to be done by Parliamentary authority will involve a diminution of revenue. Lastly, we allege competition as a ground of *locus standi*. There is no case which says that the competition of a tramway with a railway shall not give a *locus standi* to the railway. Railways have as much right to be heard against tramways as omnibuses have against tramways, or as canals have against railways. In the *Liverpool Tramways Bill* (Cliff. & Steph.

120) and the *London Tramways Bill* (2 Cliff. & Steph. 87) the omnibus companies were allowed a *locus standi*. In the adverse decisions given against railway companies (2 Cliff. & Steph. 82.6) the competition was not specifically alleged. Here, we say, we go seven miles, side by side, with the tramway for exactly the same kind of traffic.

Mr. RICKARDS: Can you cite any case in which mortgagees of tolls have been allowed a *locus standi*?

Venables: No; but I do not think there has been a case in which mortgagees of tolls possessed the same power as that given to us.

Mr. RICKARDS: Many years ago mortgagees of tolls were allowed a *locus standi*, but lately, I think, the claim has been disallowed?

Venables: We are now in a position to prove that the petitioners cross our lines on the level.

Cripps, Q.C. (for promoters): There is no such allegation in your petition. All the petition says is, that your bridges are crossed.

Venables: The petition says, "bridges and property," but if this reference is insufficient, the Referees have allowed petitions to be amended. For example, in the *North Metropolitan Tramways Bill*, 1870 (2 Cliff. and Steph. 89), the petitioners discovered that a house which was their property was taken, though they did not allege it, and the Referees allowed the petition to be amended to that extent, under the S. O. (as to frontagers).

Cripps, Q.C. (in reply): It is too late for a railway company to claim a *locus standi* against a tramway company, on the ground of competition. The railway companies appeared before the general committee on tramway bills to argue their case on that ground, but were excluded; and that principle has been followed in a variety of cases before this tribunal (2 Cliff. and Steph. 82.9) so that the question must be regarded as settled. As to the claim in respect of our using "the land, &c.," of the railway company, the argument addressed to the Court proceeds on a fallacy, assuming that if property is once bought, the purchaser can only divest himself of it by contract or conveyance. But there are many ways in which the right to land may be lost, more particularly by dedicating it to the public, which is not done by a special instrument, but by the act of throwing it open and allowing the public to use it. That is especially so with reference to a bridge over which the public pass. There the land of the railway is the land under the bridge upon which their lines are laid. What goes over the bridge is a mere way, and that way is dedicated to the public, and belongs to the public, represented by the road authority. The old maxim *cujus est solum ejus est usque ad cælum* does not apply universally. It is a doctrine to which there are numberless exceptions. For instance, a man may have the freehold of a set of chambers, and other persons may have the freehold of different sets of chambers above or below him. Another exception is where, over your own land, a way exists which you have dedicated to the public. The railway company over whose land the bridge is carried may have an interest in the structure of the bridge, so far as regards the security of their

railway, and to this extent they have a right to appear, their *locus standi* being so limited. As to the signal-post, as long as it is not a nuisance it may be permitted to stand; but it can confer no right whatever upon the company. To say that the word "land" in the S. O. means a bridge over the land, is a perversion of words. Here we use no lands whatever of the company; we use the way over the land, which they have dedicated to the public. Again, this S. O. only applies to a "railway bill;" and we must assume that those who framed this S. O. knew the difference between a railway and a tramway. In the enumeration of private bills, railways are specified as one class, and tramways as another class. A railway and a tramway are, therefore, two distinct things, and treated as such by the S. O., which does not apply to this bill. It is said that the railway company have a right to be heard as mortgagees of the tolls upon the road. If anything be done to prejudice those tolls, the road trustees are the parties to represent the interests of the road; and it would be opposed to all practice to admit both them and their *cestui que trust*, who might perhaps take different views of the same matter. You might have the trustees thinking that the tolls would be increased by the tramway competition, and you might have somebody else desiring to put another view before the Committee. Here the road trustees have petitioned; their *locus standi* has not been objected to; and if the railway companies can induce them to take their view of the case, it will be raised before the Committee. The railway companies are nothing more than ordinary mortgagees, parties who have lent their money upon the security of the tolls. Some time ago mortgagees were entitled to oppose railway bills, but that is not the recent practice. These two companies as mortgagees are represented by the trustees, and could not be heard, even though the trustees were not petitioning; *a fortiori* where the trustees are themselves before the Committee, the companies cannot be heard.

MR. RICKARDS: You are arguing that these mortgagees are not entitled to be heard, because their representatives are the proper parties. Are trustees of the roads allowed to appear against railway schemes, on the ground that their tolls may be diminished by the making of the railway?

CRIPPS: I think not now. As to the veto, the petitioners are placed in an extremely favourable position with reference to any resolution of the trustees, upon whom they are able to bring a considerable amount of influence to bear. The veto is their protection, and they do not therefore want to come separately before the Committee.

THE CHAIRMAN (after consultation): The *locus standi* of the railway companies is *Allowed* against such of the provisions of the bill as may authorise an interference with any bridges or works of the petitioners.

Agents for the railway companies, *Grahames & Wardlaw*.

EAST AND WEST JUNCTION RAILWAY BILL.

21st April, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.)

Petition of the GREAT WESTERN RAILWAY COMPANY.

Railway—Extension of Time for Constructing—Landowning Railway Company—Opposition by—Agreement for Sale of Land and other Purposes—Board of Trade Warrant—Alleged Insolvency.

A railway company, incorporated in 1864, entered into an agreement with the Great Western railway company, whereby they contracted to take 16 acres of land belonging to that company, and to execute certain works, the value of the land to be settled by arbitration. The land had been taken, but the works agreed upon had not been executed, and the promoters, who were alleged to be in an insolvent condition, now sought to extend the time for construction of works. The Great Western company petitioned against the bill, and argued that the existence of the unfulfilled agreement, and the insolvency of the company, removed this from the class of cases in which landowners, who had received notice to treat, were afterwards held to be mere creditors:

Held, upon the facts as stated, that the Great Western company had a *locus standi*.

This was a bill to extend the time for the completion of works. The Act authorising the construction of the railway passed in 1864; an extension of time for two years was obtained from the Board of Trade; and, in 1870, a bill for further extension of time was introduced, but failed on S. O. The petitioners had allowed the company to take 16 acres of their land at the Fenny Compton station, for the purposes of the undertaking, and had entered into an agreement with the promoters as to the making of sidings, a coal yard, foot-bridge, and other things, some of which were to be made at the joint expense of the companies, and some at the expense of the East and West Junction company alone. The petitioners alleged that they had not been paid for their 16 acres of land, and that the conditions on which the promoters had taken the land were unfulfilled.

The *locus standi* of the petitioners was objected to, because (1) no land, house, property, right, or interest of the petitioners will be taken or affected under the bill; (2) the petition does not show any sufficient interest in the objects and provisions of the bill.

Merewether, Q.C. (for petitioners): We did not oppose the bill of 1864, being then on good

terms with the promoters, but this state of things did not continue after the Act passed. For our 16 acres of land we have not received a farthing. They have also erected two piers, but have not completed the bridge by which they are to go over our line. It is true we have received notice to treat for our land, but we have not been paid for it; and as we granted it in the hope of getting traffic—a hope which has not been fulfilled—we now seek to go before the Committee and ask for our land back again. In *Lord Lyttelton's* case (Smeth. 110), the railway company was solvent; and he was simply bound to sell some land, there being no agreement. Here the agreement embraces many other points, and if we are heard we shall have no difficulty in showing that this company is insolvent. The *Drayton Junction Bill* (Cliff. & Steph. 28), the *Abergareenny and Monmouth Railway Bill* (Ib. 26), and the *North Metropolitan Bill*, 1870 (2 Cliff. & Steph. 24), are in our favour.

Cripps, Q.C. (for promoters): The company has completed a considerable portion of its works.

Merewether: Six miles out of 32.

Cripps: The whole of this part of the line is on the point of being opened; and as the bill is one to extend the time, not for the taking of lands, but for the completion of works, all questions as to the taking of lands remain unaffected by this bill, which does not extend our powers in any way in this respect. The petitioners have put themselves entirely out of court. If they were even in the position of an ordinary landowner, who, having appeared against the passing of a railway bill, afterwards comes to oppose an extension of time bill, it is doubtful whether, under recent decisions, they would be entitled to be heard. But the Great Western company have entered into an agreement and contract with us, and their position must therefore be regulated entirely by that contract. It is no longer the case of a landowner holding a railway at arm's length, the one party opposing the other in Parliament; but whilst our bill was pending in 1864, the petitioners, for their own benefit, entered into an agreement with us, in virtue of which they withdrew their opposition, and by its terms they must now abide, for it is capable of being enforced. Nor is this all, for after the passing of our bill the petitioners entered into a fresh agreement with us. No doubt it states that "a proper agreement shall be prepared;" but such a provision makes no difference, simply referring to a more extended agreement. The subsisting agreement governs our relations with the petitioners, prescribing what shall be done by the petitioners and by ourselves respectively, what amount of land shall be taken, and where a junction shall be made at the Fenny Compton station. This agreement contains no limitation as to the time within which it shall be executed, and to import such a condition is really to make a new agreement between the parties.

Merewether: The time is limited by the bill.

Cripps: The agreement takes the case entirely outside the bill. It is for the courts of law to interpret such an agreement. At any moment, under the agreement, the petitioners can call on us to submit to arbitration as to the value of the

land. The property to be taken is defined; the amount of money to be paid is to be determined by the arbitrator. According to the ruling of the Court, therefore, in *Lord Lyttelton's* case and in the *Teign Valley Railway* (Cliff. & Steph. 33), and other cases, the Great Western company are merely creditors. We are the owners of whatever land we are entitled to under the agreement, and the Great Western company merely hold the land for us till the arbitration determines between us. In the *Abergareenny and Monmouth* case there was no agreement between the companies; the bill was to extend the time for the purchase of land; and the Great Western company, who had opposed the power to take their land at the time the original bill was passed, opposed the extension of time on the ground that what was an inconvenience to them originally would continue to be an inconvenience to them.

The CHAIRMAN: The *locus standi* of the Great Western railway company is *Allowed*.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Young, Maples, & Co.*

DUBLIN TRAMWAYS BILL.

21st April, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petitions of (1) MERCHANTS, TRADERS, AND CITIZENS OF DUBLIN; (2) DUBLIN, RATHMINA, RATHGAR, ROUNDTOWN, RATHFARNHAM, AND RATHCOOLE RAILWAY COMPANY; (3) DUBLIN, WICKLOW, AND WEXFORD RAILWAY COMPANY.

Tramways in Ireland—Petition of Merchants, Traders, &c.—Representation—Sufficiency of Description—Signatures Withdrawn—Railway Companies—Structural Injury—Competition—Frontagers—Tramways (Ireland) Acts, 1860 and 1861.

On a petition by merchants, traders, and others against a bill for the construction of street tramways in Dublin, a *locus standi* was allowed to such only of the petitioners as resided or carried on business in the streets traversed by the tramways.

The general Tramway Acts giving to Irish railway companies in certain cases a veto upon the construction of competing tramways, do not affect the principle upon which a *locus standi* is granted by the Court in such matters; and, therefore, following the decisions in the case of English railways, a *locus standi* was refused to two Irish railway companies, who sought to be heard against a tramway bill on the ground of compe-

tion; a limited *locus* being allowed, in one case, on the question of "frontage."

The bill was one "to authorise the construction of tramways in and near the city of Dublin, and for other purposes."

The petition of the merchants, traders, and citizens was signed by between 80 and 100 persons, who alleged that many of the streets to be traversed by the tramways were the chief thoroughfares of the city; that some of those streets, by reason of their narrowness and winding form, would be rendered dangerous to foot passengers by the construction of tramways, which would also obstruct the traffic; that such of the petitioners as carried on business in those places would be inconvenienced and put to loss by the proximity of the tramways to their establishments; and that the bill would deprive petitioners of their legal rights to use the whole thoroughfare on which trams were to be laid, and would subject the petitioners to a restricted use of those thoroughfares.

The Dublin, Rathmines, &c., railway company sought a *locus standi* on the ground of competition, and also because the tramway would cross the line of railway, would obstruct the traffic to and from the central terminus of the company in Dublin, and would interfere with the business of the company, as general carriers, impeding their use of the streets and thoroughfares of Dublin with waggons, carts, and vans.

The Dublin, Wicklow, and Wexford railway company petitioned on the ground of competition, and also alleged that the construction of the tramways, 14 and 14a, along Westland Row, in front of the Westland Row station, and the houses, warehouses, and buildings comprised in the same, occupied by the petitioners, would injuriously affect them in the use and enjoyment of their premises and in the conduct of their business.

The *locus standi* of merchants, traders, and citizens of Dublin was objected to, because (1) the bill contains no provisions for taking or using any lands, houses, or property of the petitioners; (2) the petitioners are not the owners or occupiers of any houses, shops, or warehouses in any street through which it is proposed to construct any tramway; (3) the construction or use of the proposed tramways will not injuriously affect the petitioners in the use or enjoyment of their premises, or in the conduct of their trade or business; (4) the petitioners are not entitled to be heard according to practice.

The *locus standi* of the Dublin, Rathmines, Rathgar, &c., railway company was objected to on similar grounds, and also because the petition disclosed no sufficient case of competition, and the petitioners had no such interest in the streets as entitled them to be heard.

The objections to the *locus standi* of the Dublin, Wicklow, and Wexford railway company were in similar terms.

Pembroke Stephens (for Merchants, &c.; and for the Dublin, Rathmines, &c., railway company): The corporation does not really oppose

and even if it did, the street authority does not represent all the interests affected by interference with the roads, apart from the questions of frontage, and user of roads. (*London Street Tramways Bill*, 2 Cliff. and Steph. 89.) The Dublin and Rathmines line is not yet constructed, but for the purposes of *locus standi* is in the same position as if it were made. The tramway is laid on the surface of the road, and the railway will have to cross over that road. In obtaining our Act we were put under conditions, so that we might avoid injury to the water pipes, gas pipes, and sewers; and if we are to comply with those conditions, there must be corresponding clauses in the tramway bill, both for our own protection and that of the public. We complain also of interference with the access to our central terminus. The Tramways Act, 1870, does not extend to Ireland, the reason for which must be that there exists in Ireland a tramway code already. (23 and 24 Vic., c. 152; and 24 and 25 Vic., c. 102.) Under the first of these Acts no application may be made for the construction of a tramway "to unite places between which statutory powers for making a railway or railways for directly connecting the same shall have been granted and be in force." Such a railway exists here; and, therefore, if the promoters had applied for power to make their tramway under these general Acts, the Dublin and Rathmines company would have had a veto upon that portion of the tramway which competes with our own. The question is whether promoters, who thus evade the operation of the Tramway Acts specially relating to Ireland, can, by coming to Parliament, deprive us of the rights which those Acts confer upon us.

Thesiger (for Dublin, Wicklow, and Wexford railway company): In other tramway cases, where a *locus standi* on the ground of competition has been refused to railway companies, there was no distinct allegation, on the part of the railway companies, of the points between which the competition is to arise. Here we make a distinct allegation; and I also rely upon the proviso to section 1 of the Tramways (Ireland) Act 1860, which distinctly states that a tramway shall not be authorised in competition with a railway. We are also entitled, under the S. O., to a *locus standi* as frontagers. (*North Metropolitan Tramways Bill*; 2 Cliff. and Steph. 89.)

Clerk, Q.C. (for promoters): As to the petition of merchants and others, 39 of the 80 signatures have been withdrawn; and 40 or 50 inhabitants, out of a population of 300,000, alleging no special interest differing from that of any other citizens, cannot be heard, especially as the corporation of Dublin petition, and are not objected to. The only ground upon which the petitioners can claim to be heard arises under the S. O. as to frontagers; but there is no allegation that any of the persons who sign the petition have any places of business of their own on the line of the tramway. All they allege is "that such of your petitioners as carry on business in those thoroughfares would be sadly inconvenienced" by them; and it may well be that not a single person signing the petition occupies any premises in any street affected by the tramway.

The CHAIRMAN: It appears from the signatures, —(giving the addresses of the petitioners)—that they do?

Clerk: In any case, only those petitioners can appear whose premises are so affected. As to the railway companies who petition, I concede a limited *locus standi* to the Dublin, Wicklow, and Wexford company, as frontagers in respect of their Westland Row station. The question is whether, when we ask Parliament for power to construct a tramway in Ireland, the *locus standi* of railway companies is to be governed by the Tramways (Ireland) Act, 1860, and the Amendment Act of 1861. You do not hear railway companies against tramways on the ground of competition. (2 Cliff. and Steph. 82-9.) Is the *locus standi* of railways in Ireland to be governed by a different principle? The general Acts which have been quoted, contain no obligation upon promoters of tramways to proceed under those Acts; and the proviso against constructing a tramway to unite places between which there is an authorised line of railway, refers only to applications under the Act of 1860. The whole object of that Act is to facilitate the construction of cheap rural tramways, entirely distinct from what is sought here—a street tramway, constructed with the assent of the street authority. We are proceeding not under the Act of 1860, but according to the general practice of Parliament; and previous decisions as to the *locus standi* of railway companies, are therefore binding. As to the claim of the Dublin and Rathmines company, to be heard on the ground of structural injury, the tramway will not entail the slightest cost or inconvenience upon the railway company. In one case they will construct a bridge over an existing road, and, therefore, it will be immaterial what use is made of the road; in the other case they will have to tunnel underneath the road, and it will be equally immaterial to them whether a tramway is placed upon that road or not. As to the central terminus, no tramway passes in such a position as to obstruct the access to it, or to confer on the company a *locus standi* under the S. O. The entrance to the central terminus will be 300 yards from the part of the road where the tramways are to be laid.

The CHAIRMAN (after deliberation): The *locus standi* of such of the merchants, traders, and citizens as are owners or occupiers of premises in any street through which it is proposed to lay the tramways is *Allowed*. The *locus standi* of the Dublin, Rathmines, &c., railway company is *Disallowed*. The *locus standi* of the Dublin, Wicklow and Wexford railway company is *Allowed* against tramways Nos. 14 and 14a.

Agents for Bill, Sherwood & Co.

Agents for Merchants, &c., and for Dublin, Rathmines, &c., railway company, Cruse & Bigg.

Agents for Dublin, Wicklow, and Wexford railway company, Holmes, Anton, Greig, & White.

GLASGOW AND SOUTH WESTERN RAILWAY BILL.

24th April, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.)

Petition of (1) EDWARD HENRY JOHN CRAUTCH, M.P.

Railway—Abandonment—Relief from Penalties—Application of authorised Capital—Lands acquired by Company—Proposed sale of—Landowner—Agreement with—Lands Clauses Act, 1845, sec. 128—Right of Pre-emption taken away—Claim to general locus.
[Streetfield's case (London Brighton, &c., Bill, 1868,) considered.]

A bill promoted by a railway company (*inter alia*) for the abandonment of a branch line, seven miles in length, to relieve them from penalties, and to authorise the application to general purposes of the special capital of the abandoned railway, and the sale of lands acquired by the company, was opposed by a landowner, through whose estate this branch line passed for two miles. His were the only lands which had been taken, an agreement—entered into as the price of his withdrawal of opposition originally,—binding the company to take these lands within a specified time, and to execute certain works for his accommodation. The promoters conceded him a *locus standi* against Clause 5, which took away the right of pre-emption to which he was entitled under the Lands Clauses Consolidation Act, 1845. The petitioner, however, claimed a general *locus standi*:

Held, that he was entitled to be heard against so much of the bill as related to the abandonment of the railway.

This was a bill to enable the Glasgow and South Western railway company to abandon the construction of certain authorised railways. Among these was the West Kilbride railway, authorised by Acts passed in 1865 and 1868. Under the Act of 1865, the promoters would have been liable to a penalty of £50 a day for non-completion of the line; but in 1868 the time was extended, and a penalty of 5 per cent. upon the estimated cost was substituted. By the bill the company were relieved from all penalties, and the capital authorised in respect of the abandoned railway was to be applied to the general purposes of their undertaking. Under another clause, the company might "retain, or sell and dispose of, on lease, or feu, or otherwise, at such times, in such portions, and on such terms as they thought fit, any lands acquired by them for the purposes of

ilways" proposed to be abandoned. The Kilbride line for upwards of two miles used the estate of Mr. Craufurd at Auchenas. In 1865, as the price of his withdrawal of the line from its original Act, the company entered into an agreement with him as to the land on which his land was to be taken. This particular land was acquired and paid for, but of the other lands needed for the railway taken. Mr. Craufurd resisted, as especially to him, the proposal to apply to any other lands which he had sold expressly for way.

locus standi of the petitioner was objected to, because (1) no lands or property of the petitioner could be taken, used, or interfered with by the bill; (2) the lands required for the construction of the railway had been bought and paid for, and the petitioner, as a landowner or otherwise, had not any right to be heard; (3) revocation of contingent and consequential easements resulting from the construction of the railway did not give him any such right; (4) the petitioner's consent and conveyance affecting the lands needed no covenant on the part of the promoters to construct the railway, or to use the petitioner's land only for railway purposes; (5) no obligation had been incurred by the promoters; (6) no sufficient ground was shown for the bill to practice.

Mr. Cripps, Q.C. (for petitioner): The company are paying a 5½ per cent. dividend on their ordinary stock; they can accordingly have no difficulty in raising the capital requisite for the West of Scotland railway. If they are allowed to sell the land, and on any terms they think fit, which extend for upwards of two miles from the heart of the estate of Auchenas, it will be most injurious to the petitioner. The railway is but a little over seven miles in length, so that a fourth of it would be on Mr. Craufurd's land. The promoters created an exception in the district that they would make the railway; they kept in their own hands for the power of doing so, and they prevented effective local efforts to provide an accommodation which is much needed. They do not, by agreement, expressly covenant to make the railway; but none of the accommodation is contingent upon the construction of the railway itself. In ordinary cases, and in the case of agreement, where land is taken, or is to be taken, the landowner loses his *locus standi*. But many persons have looked on the case in *Streetfield's* case, *London Brighton and South Coast Railway Bill*, 1868 (*Cliff. & Steph. 18*), as an extreme hardship.

CHAIRMAN: It would appear that Mr. Craufurd had a right of pre-emption?

Mr. Cripps: So would my client, under the Lands Act, but for Clause 5 of the bill, which takes away any right of pre-emption.

Mr. Cripps, Q.C. (for promoters): Clause 5 undoubtedly gives us power which we do not possess under the General Act. Against that clause the petitioner may properly be heard.

Mr. Cripps: I claim the right to oppose in toto the abandonment of the West Kilbride line. If *locus standi* were confined to Clause 5, I could not oppose here, but elsewhere. The bill

might then pass this House unopposed, yet having a clause in it which would enable the company to create an absolute nuisance two miles in length. They have served us with notice of this bill.

Cripps, Q.C. (in reply): It is difficult to say which has least right to appear on an abandonment bill—a man who has no agreement at all with the company, or a man who has. A landowner having an agreement has taken his rights out of the ordinary category, and has made them the subject of contract, the interpretation of which is for the courts of law. Whether the petitioner chooses to pursue the remedies open to him here, or in the House of Lords, cannot affect the general principle. And though a bill may become unopposed, it is still narrowly scrutinised by the authorities. I concede his *locus standi* against Clause 5.

Mr. RICKARDS: A landowner whose land will be touched by a bill, has a general *locus standi*. This clause proposes to take away the landowner's right of pre-emption. *Pari ratione* is not the taking away of the right of pre-emption equivalent to a taking in the first instance, and ought it not to give the landowner an equally extensive *locus standi*?

Cripps: The grounds on which a landowner, whose land is taken, has a right to challenge the whole bill, do not apply when the question is whether you should be allowed to abandon a railway, notwithstanding the existence of a contract with a particular landowner.

Mr. RICKARDS: You recite that it is expedient, on public grounds, to abandon the railway. With that object you seek to over-ride the landowner's rights. He then challenges the expediency of the abandonment?

Cripps: He is no longer in a position to keep the company at arm's length, for he has parted with his land.

Mr. RICKARDS: Is not that subject to the implied condition that, if the line is abandoned, the landowner recurs to his rights of pre-emption?

Cripps: Not in the face of actual contract, for any breach of which the party has his remedy at law. The decisions are all in favour of limiting the *locus standi*, as I propose. (*Caledonian Railway Bill*, 1869; *Petition of Sir Michael Shaw Stewart*; *Cliff. & Steph. 21*.) All we seek is to get back our deposit, and be relieved from penalties for non-construction; any existing liabilities to creditors will remain.

The *CHAIRMAN* (after consultation): The *locus standi* of Mr. Craufurd is allowed against so much of the bill as relates to the abandonment of the West Kilbride railway.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioner, *Lock & MacLaurin.*

Petition of (2) *ROSINA E. DOUGLAS or DREW*, and *PETER DREW.*

Abandonment—Landowners—Subscription by—Motives for—Desiring lands to be taken—Shareholders—Creditors—Penalties—Relief from—

Lands Clauses Act—Compensation for abandonment—Physical or speculative injury—Prospective advantages from railway, loss of.

A bill for abandonment of a railway was opposed by landowners whose lands had not been taken, but who were anxious for the line to be made, and on that account had become shareholders in the company. They put forward this double claim to be heard, and complained further that the bill, by relieving the company from penalties, would extinguish the fund for compensation. They had no agreement, however, with the company, either as to lands, or as to the terms of subscription; and the compulsory powers of the company had expired:

Held, that the petitioners had no *locus standi*.

These petitioners were affected by the abandonment of the same railway. Mrs. Drew and her husband were proprietors of the lands of Holms of Caup and Lincraigs, through which the proposed line would have passed. The railway company had not given them notice to treat; but though the time for compulsory purchase had expired, the petitioners were anxious that their lands should be taken and the line made, as it would facilitate the working of mines on their estate, at present only reached by a private tramway, which might be removed by the owners in five years.

The *locus standi* of the petitioners was objected to, because (1) the promoters had no longer power to take compulsorily for the purpose of the West Kilbride railway any portion whatever of the petitioners' land; (2) mere revocation of contingent and consequential benefits which the petitioners might have derived from the construction of the railway did not entitle them to be heard against its abandonment; (3) if the petitioners were holders of any shares or stock in the promoters' capital that gave them no stronger claim; (4) it was not alleged that the promoters had entered into any contract or agreement with the petitioners; (5) no sufficient ground was shown according to practice.

Grahame (Parliamentary Agent for petitioners): We assented to the construction of the railway, and took shares to a considerable amount in the capital stock of the company for the express purpose of contributing to the funds necessary for making the line through our lands. Hence, though not in writing, a *quasi* contract was entered into with us.

Mr. RICKARDS: How does that contract arise?

Grahame: From our contributing funds necessary for the construction of the railway. We acquired these shares for the express purpose.

Mr. RICKARDS: Were the shares taken on any express contract, or in the ordinary way?

Grahame: In the ordinary way; but we lay stress on the motive with which they were taken.

Mr. RICKARDS: The company were not privy to the motive influencing the petitioners?

Grahame: I cannot prove that they were; but if I did so, that would be an express contract. The company are now seeking to abandon the line. I want to show why we entered into the arrangement at all. We are landowners who subscribed money for a particular purpose, and it is about to be applied under the bill to a purpose totally different.

The CHAIRMAN: How does your case in that respect differ from that of any other shareholder?

Grahame: I have a double interest in the line, and in the land.

Mr. RICKARDS: You do not allege that there was any agreement or mutual understanding between you and the company as to the motive with which the subscription was made?

Grahame: No; but it is highly probable that there was. Under the Act of 1868, we should be entitled to have a sum of £4,000 impounded for compensation to landowners; but this bill relieves the company from all liability. According to the decisions, a landowner who has parted with his land becomes a creditor; but that is not our case. The circumstances here can be distinguished from those in the *Petition of R. J. Streetfield* (Cliff. & Steph. 18); the cases cited in Cliff. and Steph. *Practice* (27-9); the *Tottenham and Hampstead Junction Railway Bill*, 1870 (2 Cliff. & Steph. 32); also from those decisions referred to in (Smeth. 33-4) and (May 6th edition, 691).

Cripps, Q.C. (for promoters): This is an abandonment bill, and the petitioners are but ordinary landowners; the fact that they are also shareholders gives them no further right to appear. As shareholders they are bound by the seal of the company, and they have no distinct interest. Since 1852 it has been regarded as settled, that landowners are not affected to such an extent by an abandonment bill as entitles them to oppose. A bill for construction of a railway seeks to do something with land which the law does not allow; but in an abandonment bill the compulsory power over land is relinquished, the landowner resumes his former position, and can only appear, if at all, as one of a class. A landowner cannot, at common law, compel a company to complete a railway. (Cliff. & Steph., *Practice* 29; and *Reports* 32.) What legal right then has he to resist its abandonment? Our bill contains the ordinary saving clause as to compensation for injury actually done to lands.

The CHAIRMAN: That only saves the compensation under the Lands Clauses Consolidation Act, 1845?

Cripps: Under that Act a landowner is entitled to receive compensation for any injury he has sustained by the temporary occupation of his land, or for any consequent damage or loss.

The CHAIRMAN: Under the modern S. O. clause, which was introduced into your act of 1868, a penalty was to be levied on the company, which was to be applicable towards compensating any landowners or other persons "whose property may have been interfered with or otherwise rendered less valuable by the com-

mencement, construction, or abandonment of the said railway, or who may have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company." That clause, which makes the penalty assets for any injury proved to be done by the abandonment, is repealed by your bill?

Cripps: Our clause does not affect the right of a landowner to receive compensation, in accordance with the provisions of the Lands Clauses Act. I do not apprehend that the words of the Act of 1868 are at all larger than Clause 3 of this bill. It must be some physical injury, in respect of which the landowner can claim any compensation out of the penalty.

Mr. RICKARDS: Supposing the owner of property adjoining a railway, authorised but not constructed, wished to sell part of his land. If he brought it to market on the passing of the Act, it would realize an enhanced value by reason of the railway coming there; but if, in the following year, an Act was passed authorising the abandonment of that railway, the value of his property would be very much diminished. The question is, whether that is such a case as the S. O. contemplates, or whether that is a mere contingency, not within the meaning of the S. O.?

Cripps: According to my interpretation of the S. O., it is clear that there must be some physical damage resulting from the commencement, construction, or abandonment of the line, to entitle a landowner to compensation.

Mr. RICKARDS: If it were otherwise, any person whose land was not taken or used for the purposes of the railway, but who had land contiguous to the railway, would have the same claim?

Cripps: If I buy a piece of land near to which a railway is proposed to be made, I have no right to rely on the railway being made: it is a contingency, which I may or may not take into consideration. I take it as perfectly clear that the S. O. must refer to physical injury affecting the particular land.

The CHAIRMAN: You mean that it cannot apply to a mere withdrawal of an advantage, which might have resulted from the making of the railway?

Cripps: Certainly not. If it did, it would have been a much more extended order; it would have applied much more generally, and it would have put an end to the possibility of abandonment bills at all.

The CHAIRMAN: Does an abandonment bill do anything except relieve the company from the penalty for non-construction?

Cripps: Not necessarily. There are frequently some special points to be dealt with; but what is asked in an abandonment bill is simply exemption from penalties. If you take away these, you take away the only means of enforcing the making of the railway.

The CHAIRMAN: In this case the compulsory powers have expired; therefore it is a bill to relieve the company from the penalty for the non-completion of their works, and for nothing else?

Cripps: The petitioners are not aggrieved in any way; nothing has been, or will be, done

to their land. If you are to deal with mere speculative injuries, that may extend far beyond the case of a landowner.

Mr. RICKARDS: But the case of a landowner is mentioned in the S. O., and compensation provided out of the penalty?

Cripps: If a landowner brings himself within the terms of the S. O.

Mr. RICKARDS: You contend that the concession of a line by Parliament does not give a landowner such a vested interest in any of the prospective advantages of that railway as would entitle him to compensation in the event of their withdrawal?

Cripps: Yes; the thing is inchoate altogether
Locus standi Disallowed.

Agents for petitioners, *Grahames & Wardlaw*.

NORTH EASTERN RAILWAY BILL.

21st April, 1871.—(*Before Mr. DONSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.*)

Petition of (1) IRON MANUFACTURERS of the NORTH of ENGLAND.

Railway—Traders and Freighters—Association of—Insufficient Description—Single Traders—Petition—Amendment of—Evidence—Ratification—Practice.

A bill conferring additional powers on a railway company was opposed on the ground of apprehended monopoly by the iron manufacturers of a district served by the company. These manufacturers formed an association for trade purposes, and two of their number signed the petition as "President" and "Secretary." No reference, however, was made to the association, either in the heading or the body of the petition. It was contended that an association could not properly petition in this manner; and that the two signatures must be viewed as those of single traders:

Held, that the petitioners had no *locus standi*, although there had since been meetings confirmatory of the resolution to petition.

This was a bill enabling the North Eastern railway company "to construct railways and other works in the counties of York, Northumberland, and Durham, and in the borough and county of Newcastle-upon-Tyne, and for vesting in them the Derwent navigation, and for other purposes."

The petitioners were members of an association, stated to comprise nearly all the iron manufacturers between the North Riding of Yorkshire and Newcastle-upon-Tyne; but their petition was signed only by William Whitwell

as "President," and John Jones as "Secretary;" and neither in the heading nor the body of the petition was the name of the association mentioned or referred to.

The *locus standi* of the petitioners was objected to, because (1) the petition was signed by only two persons, one of whom described himself as "President," and the other as "Secretary;" but it did not appear of what they were respectively "President" or "Secretary;" nor did it appear whether the expression "your petitioners" applied to the iron manufacturers of the North of England as a body, or only to the two individuals; neither did it appear whether either of those individuals was in fact an iron manufacturer; (2) the bill contained no provisions affecting the property, rights, or interests of the ironmasters in the petition referred to, or any of them; (3) they had no right to be heard with respect to rates and charges demanded by the promoters upon their existing railway, as that question was not raised by the bill; (4) no sufficient interest was shown according to practice.

Granville Somerset, Q.C. (for petitioners): The North Eastern railway has a monopoly of the mineral trade of the district. We are manufacturers who already suffer, and will be further injured by the extension now sought of the powers of that company. It is true we have not used the word "association," but that may be implied. A petition need not be drawn with the strictness of an indictment for perjury; it is sufficient if any reasonable person can understand its meaning. This is not a corporation, but an association representing the traders of the district. The signature of the president is sufficient, and the signature of the secretary, in addition, is surplusage.

Mr. RICKARDS: If it is surplusage the petition is signed by only one person?

Somerset: The president signs for all. He cannot be president of nothing.

Mr. WYNN: The signature would have been right if this had been formally alleged to be the petition of the association?

Somerset: If these gentlemen chose to call themselves "iron manufacturers," and not to use the word "association," that is no reason they should lose their *locus standi* if you are satisfied that such a body exists.

[*Mr. Whitwell* was examined, and deposed that the association consisted of iron manufacturers—i.e., those who manufactured pig-iron, as distinguished from ironmasters who smelted the ore. He signed the petition as president of the association, in accordance with a resolution passed at a meeting of that body, which was a body regularly organised, with rules, officers, and funds. "The Iron Manufacturers' Association of the North of England" was its correct title; but it was sometimes called "The Iron Manufacturers," that being a phrase used colloquially. The authority to sign the petition when prepared was given at the annual meeting of the association. He could not say whether before that meeting notice of the intention to petition had been given. Special meetings had been since held at which the resolution was confirmed. *The association was one for the general good*

of the iron manufacturers of the north of England, and for protecting their interests, whether by Parliamentary opposition or otherwise.]

Somerset: I ask permission to amend the heading of the petition by inserting "association."

Saunders (for promoters): The Referees have no power to amend a petition. If this petition emanates from an association at all, it ought to be correctly described. But even in the allegations there is no reference to an association, or correction of the statement in the title; nor do they allege that they are carriers or freighters on the railway.

Mr. RICKARDS: The petition says, "Your petitioners are iron manufacturers, whose business much depends upon the facilities afforded by this company."

Saunders: Then it comes within the category of a single trader. Where a meeting was not duly convened with the object of petitioning, the *locus standi* was disallowed. (*Great Eastern (Metropolitan Railways) Bill*; 2 *Cliff. & Steph.* 15.)

Somerset: In that case the special notice required by Act of Parliament had not been given. But here subsequent meetings, called with notice, have ratified the petition, and that is sufficient. (*Glasgow Court Houses Bill*, 1868; *Cliff. & Steph.* 160.)

The CHAIRMAN: The *locus standi* of the petitioners is *Disallowed*.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioners, *Durnford & Co.*

Petition of (2) CORPORATION OF MIDDLESBOUGH.

Railway—Corporation—Level Crossing—Ownership of Streets—Not denied—Tolls and Rates—Limited or General Locus Standi—Practice.

A bill for the construction of a branch line to join an existing railway near the point where it crossed, on a level, a street in a borough, was opposed by the corporation, who claimed the ownership of the streets, and tendered evidence to supplement the statement on that head contained in their petition. The promoters had not denied the fact of ownership in their objections, and were willing to let the petitioners be heard as to interference with streets, but not as to tolls and rates, or as to the policy of the line generally:

Held, however, that the petitioners, as land-owners, could not be so confined. "Under the general law of Parliament, they had a *locus standi* against everything in the bill."

The petitioners complained that the proposed railway No. 6, would join the Middlesbrough branch of the North Eastern railway, and near that junction would cross upon the level Billingham Lane, a thoroughfare within the borough, leading to a wharf belonging to the corporation. As the local board of health for Middlesbrough, the petitioners claimed to be the owners of roads, streets, and public ways, within the borough. They were also owners of gas-works, and apprehended interference with their mains and pipes. The promoters were willing to concede a partial *locus standi*; but refused to grant a hearing against tolls and rates and against the bill generally.

The *locus standi* of the petitioners was objected to, because (1) the only question of tolls involved in the bill was in respect of the new railways proposed to be authorised; (2) the petitioners were not carriers and freighters upon the railways of the promoters, or otherwise so affected by the question of tolls as to be entitled to be heard thereon; (3) they were not entitled to a hearing according to practice.

Granville Somerset, Q.C. (for petitioners): They do not deny our statement that we are owners of streets, gas-pipes, &c.; but if the wording of the petition is regarded as not sufficiently definite, I will call the Town Clerk.

Saunders (for promoters): The gasworks are not scheduled, and will not be touched by the bill. As to the claim to be heard on the ground of interference with streets, that only entitles a corporation to a limited *locus standi*. (*Great Western Railway Bill, 1866; Smeth. 175-7.*) They have no claim whatever to be heard as to tolls and rates.

The CHAIRMAN: The petitioners allege that they are owners of property which may be touched, and that allegation is not traversed. If they are landowners, then, under the general law of Parliament, they have a *locus standi* against everything in the bill.

Locus standi Allowed.

Agents for Petitioners, Durnford & Co.

Petitions of (3) STOCKTON RAIL MILL COMPANY and OTHERS; (4) STOCKTON-ON-TEES CHAMBER of COMMERCE; (5) CORPORATION of STOCKTON and LOCAL BOARD of SOUTH STOCKTON; (6) SHIPBUILDERS, SHIPOWNERS, BANKERS, &c.; (7) SHIPBUILDERS.

Railway—Existing Rates and Tolls—New line—Extension of tolls to—Petitions, Vagueness in—Swing-bridge—Navigation—Interference with—Town above Bridge—Injury to—Conservancy Board—Changes pending in—Representation—Wharfowners—Traders and Freighters—Shipbuilders—Corporation—Chamber of Commerce—Manufacturing Companies—Bills inter-dependent.

A bill for the construction of several railways involved the crossing by a swing-bridge of

the navigable river Tees, below the town of Stockton, which apprehended injury to its manufacturing and shipping interests from this proposed interference with the navigation. Petitions, based in all cases on the same apprehension, were presented (3) by manufacturing companies, some of which owned wharfs above the bridge; (4) by the Chamber of Commerce of Stockton; (5) by the corporation of Stockton and local board of South Stockton (as to whom it was conceded that one of the thoroughfares of Stockton would be narrowed by a proposed railway bridge); (6) by shipowners, bankers, &c.; and (7) by two shipbuilders constituting a class. The promoters contended that the several petitioners had no such interest in the river, at a point two miles distant from Stockton, as entitled them to be heard; and, further, that as Stockton returned five members to the Tees conservancy board, all the interests along the river were represented by that body, to whose *locus standi* no objection had been taken. It appeared, however, that a bill for the reconstitution of the conservancy board was also pending, which the petitioners alleged would give increased weight to the towns below bridge, and would prove additionally injurious to the interests of Stockton. Accordingly, they urged that the plea of representation was no longer tenable; and, in any event, that the free navigation of the Tees was a matter to them of life or death:

Held, (3) that such of the manufacturing companies as were owners of wharves, &c., ought to be heard; (4) that the Chamber of Commerce, whose petition was confessedly identical with that from shipowners, had no *locus standi*; and (5-7) that all the remaining petitioners were entitled to be heard.

The bill, among other things, sought power to carry railway No. 6 over the river Tees by a swing-bridge, at Billingham Reach, which lies between Stockton-on-Tees and the sea. The petitioners, who represented various interests in the towns of Stockton-on-Tees and South Stockton, apprehended injury to the trade of those places, and its possible transfer to the rival town of Middlesbrough, lower down the river, owing to the construction of this swing-bridge. Their apprehensions on this point, moreover, were increased by another bill, also pending, the *Tees Conservancy Bill* (see page 122), under which the constitution of the conservancy board was proposed to be altered, and, as the

petitioners alleged, a preponderating influence given to members representing Middlesbrough, and interests lower down the river.

The *locus standi* of the Stockton rail mill company and others was objected to, because (1) no lands or houses of the petitioners were taken or used; (2) the petition was directed against the proposed bridge across the river Tees, but the petitioners had not any property, right, or interest in that river, entitling them to be heard; (3) the control and management of the river and its navigation were vested in the Tees Conservancy Commissioners, by whom the interests of the petitioners were represented, and the *locus standi* of the Commissioners was not objected to; (4) there was no allegation upon which, according to practice, they could be heard.

The *locus standi* of the corporation of Stockton, and the local board of health for South Stockton, was objected to on similar grounds; admitting however the right of the corporation to be heard against so much of the bill as related to interference with Norton Road.

The *locus standi* of the Chamber of Commerce was objected to, because (1) the only persons signing the petition were "Joseph Laing" and "John Robinson," who signed respectively as "President" and "Secretary" of the chamber, but were not entitled to be heard, either on behalf of the Chamber of Commerce or their own behalf. (The remaining objections were similar to those in the other cases: as were also the objections taken to the *locus standi* of "shipbuilders, shipowners, bankers, and others of Stockton-on-Tees and South Stockton," and of "shipbuilders at Stockton-on-Tees and South Stockton.")

Mundell, Q.C. (for Stockton rail mill company and others): The four companies I represent petition as a class of traders and freighters. The obstruction proposed will be most injurious to us as wharfowners and shippers of goods. A similar application was made by the Stockton and Darlington railway in 1858, and rejected after full inquiry. The North Eastern railway have a dock at Middlesbrough, and it is their interest to foster that town in preference to Stockton. The effect of the two bills, if carried, must be to create impediments to navigation, from which our competitors below bridge would be free, and to constitute a board whose interest would lie in improving the lower in preference to the upper navigation of the Tees. This case closely resembles the *Fareham and Netley Bill*, 1865 (Smeth. 120). We are no more represented by the Tees conservancy than the freighters in that case were by the Admiralty. These petitioners are all shippers of goods, and two of them are owners of large shipping wharfs.

Mr. RICKARDS: Do they all occupy water-side premises?

Mundell: Yes. In the case cited, it does not appear that all were owners or occupiers of wharfs and quays; but a *locus standi* granted to such owners will answer my purpose here.

Venables, Q.C. (for the corporation and the local board): These bodies are the local governments respectively of Stockton and South Stockton. Stockton has a share in the appointment of the conservancy board at present. But South Stockton, being of more recent date, has none

whatever. In addition to our objections to the swing-bridge, railway No. 7 is to be carried over one of the streets in Stockton by a narrow bridge which will contract the roadway and impede the traffic. We may not be owners of the soil of the road, but the roads are vested in us in the usual way.

Saunders (for promoters): We do not object to the *locus standi* on that point.

Venables: We have also an interest in the river as owners of a quay, the utility of which, of course, depends on the navigation; but our principal claim to be heard rests on the fact that the prosperity of the town depends on the trades which are there carried on, and these will be imperilled by the bill. We set these trades out fully in the petition; and we say that the interests of Middlesbrough and Stockton directly conflict, and that if the navigation be inconvenienced, and large vessels can no longer pass safely up and down, trade will naturally go elsewhere. As matters stand, Stockton is also the *entrepôt* of a large and increasing district. Before the Court of Referees was established, a bill with the same object as this was promoted; the inquiry lasted five weeks, and eventually, on the opposition of my clients, the bill was thrown out. As to the suggestion that we are represented by other petitioners, to whom the promoters have not objected, nothing can be more impolitic than to allow promoters to select which of the petitioners shall be heard, and then exclude other petitioners because of that arrangement. They may actually wish to be opposed by a body with a divided interest like the conservancy board, rather than by a body with a single interest like the corporation. At this moment, there is an accidental and bare majority on the conservancy board, opposed to the bill, but that may be changed at any time. Some members are nominees, and others directors of the North Eastern railway company; therefore, unless we are heard, the upper towns on the river may be deliberately sacrificed to benefit those lower down.

Venables, Q.C. (for shipbuilders, shipowners, bankers, &c.): This petition is signed by the Mayor of Stockton, by Mr. Dodds, M.P., and over 1,400 other persons, including makers of steam engines, a very important trade in Stockton. One firm alone supplies £400,000 worth of engines every year. Iron ships of 3000 tons are built here, and all the trades connected with shipbuilding are carried on. The whole of these different trades join in opposition to the proposed railway bridge. Their views generally resemble those of the corporation, and the objections taken to them are also similar. You have decided that inhabitants as well as corporations may be heard. *Great Western (Bristol and Exeter, &c.) Bill*, 1867 (Cliff. & Steph. 132); *South Eastern and London Brighton, &c., Bill*, 1868 (Cliff. & Steph. 149). But what is the interest of a town in preventing railway monopoly, compared with the interest of a maritime town in preventing the navigation from being closed?

Venables, Q.C. (for Chamber of Commerce): This body represents the whole of the traders, who are substantially identical with those signing the last petition. Though only two or three

persons sign, they do so officially, having received directions from a large meeting of the chamber held specially. I do not narrowly distinguish between these several cases, because the interests of all the petitioners are the same. There is no person in Stockton who does not know that the prosperity of both towns depends on the navigation being efficiently maintained.

Bidder (for shipbuilders at Stockton-on-Tees and South Stockton): Messrs. Pierce & Co., and Richardson, Buck & Co., who sign this petition, represent the whole of the shipbuilding interest at Stockton. Mr. Richardson signed another petition; but that was officially as Mayor of Stockton, and he was the only shipbuilder who did so. The shipbuilding yard at Stockton is two miles above the site of the proposed bridge, and has been established 25 years. Both the yards together can afford employment to 1,500 hands, and the salaries and wages paid are at the rate of £80,000 per annum, besides the support given to various subsidiary branches of industry. Previous applications to Parliament by railway companies, first, for powers to make a bridge like that now proposed, and, secondly, to cross the Tees with a ferry, were rejected, as the Committee stated, entirely on the score of interference with the navigation. Since that decision was arrived at, in 1858, the population of Stockton has more than doubled, and trade has increased in proportion, a much larger class of vessels being built, and the tendency being still to increased size. The navigation of the Tees is rendered more difficult by the frequency of fogs, and where large vessels have, as sometimes happens, to be towed obliquely, a width of track greater than is afforded by the openings of the proposed bridge would be required. In the principal shipbuilding yards on the Tees, Clyde, Tyne, Wear, and Thames, the custom is to locate them below the lowest bridge, so as to obtain uninterrupted access to the sea at all times.

Saunders (for promoters): We are going to increase the openings in the bridge from 120 to 160 feet.

Bidder: The bill can only be taken as deposited; but that concession shows the importance of having persons before the Committee who possess a practical acquaintance with the subject. This is a matter of life and death to us. The Tees Conservancy know nothing of our business.

Saunders (in reply): Under the S. O. it is left to your discretion to give a *locus standi* to municipal authorities, or inhabitants of any town or district, alleged to be injuriously affected by a bill. As to the bridge over the river Tees, there is a great similarity in the different petitions, and it would occasion serious waste of time if the same case were heard from a great many different parties. It will be set forth by the Tees Conservancy, who represent the interest of the whole river, and are elected for the very purpose of maintaining the navigation. To the corporation of Stockton we concede a *locus standi* limited to our interference with any of the roads of the borough; but the local board, who join in the same petition, have no similar right. These bodies neither represent the trade of the towns, nor the navigation of the river. Where traders

and inhabitants have claimed to be heard as well as corporations, you have not allowed both sets of petitioners to appear. The corporation of Stockton allege that they are riparian owners, but that does not give them any right to be heard. As to what happened in 1858, this Court was not then established, and questions of *locus standi* were not looked into with the same strictness. I am not aware of any case where a Chamber of Commerce has been heard; they have never certainly been heard where a board of conservators was also heard against the bill. As to the other petitions, though some may be largely signed, they have no interest distinct from that of the general trade of Stockton; and the Tees Conservancy will represent the petitioners. If Mr. Richardson, who signs the larger petition from shipbuilders, as well as the smaller one, is heard upon the first of these, that will reduce the petition of shipbuilders at Stockton and South Stockton to the petition of a single trader upon a river, the conservators of which are to be heard. The *Fareham and Netley* case differed from this; and the owners of wharves and quays do not petition in sufficient numbers to represent a class.

The CHAIRMAN (after consultation): In the case of the petition of the Stockton rail mill Company and others, the *locus standi* of such of the petitioners as are owners of wharves and quays is *Allowed*. The *locus standi* of the Stockton Chamber of Commerce is *Disallowed*. The *locus standi* of Shipbuilders at Stockton-on-Tees and South Stockton; the Corporation of Stockton and the Local Board of South Stockton; and of Shipbuilders, Shipowners, Bankers, &c., of Stockton-on-Tees and South Stockton, is *Allowed*.

Agents for Rail Mill Company, *Dyson & Co.*

Agents for Shipbuilders, *Wyatt & Hoskins.*

Agents for Chamber of Commerce; for Corporation and Local Board; and for Shipbuilders, Shipowners, Bankers, &c., *Dorington & Co.*

Petition of (8) OWNERS OF COLLIERIES AND OTHERS.

Railway—Traders—Coal and Iron—Rates and Tolls—Alleged Railway Monopoly—New Line—Application to, of Rates on Existing System—Cardwell's Act—Specific allegations, want of, in Petition.

Against the same bill colliery owners and others sought to be heard, complaining of the existing rates on the North Eastern system, and by inference but not directly, of the extension of those rates to the proposed line, which lay at some distance from their collieries and works:

Held, that, as they made no specific allegations of injury from the rates proposed on the new line, the petitioners had no *locus standi*; but (*Per Cur.*) "if traders and freighters are

ever to be heard against rates, justice would seem to require that they should be heard just as much against an extension of existing rates to a new line, as against the original bill imposing those rates."

The petitioners, colliery owners and "others interested in the coal and iron trades of the counties of Durham and York," complained of the monopoly of mineral and merchandise traffic possessed by the North Eastern company, whose capital amounted to £40,000,000: and objected to the bill as framed in furtherance of this monopoly. "The system of rates and charges which had been built up, even if justifiable in their inception long ago, became, as part of a large whole, unequal and unfair." Rates were charged on coals and coke, sent from the petitioners' collieries to ironworks in the north-eastern parts of Yorkshire, 10 to 15 per cent. higher than those charged to other colliery owners for minerals going the same distance, to be used for the same purpose. From 60 to 80 per cent. additional was similarly charged on coal, sent by the petitioners for shipment at West Hartlepool.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs were taken or injuriously affected; (2) the bill contained no provisions relating to rates and charges on the existing railway; (3) no sufficient ground for a hearing was shown.

Bidder (for petitioners): We represent a class; the petition being signed by owners of collieries to the value of £1,500,000. Eight of the eleven petitioners are coalowners, the three others being iron manufacturers at the end of the line: two at Middlesbrough, and one at Darlington. If the proposed railway is constructed, it will become the route by which the petitioners' coal will be conveyed.

Mr. RICKARDS: The petition is rather meagre about the petitioners' interests as affected by the bill. The new portions of line to be made seem a good way off?

Bidder: The reference to the West Hartlepool traffic is only given as an illustration of what the company do now. We do not object to the mere construction of the line; our object is, as traders sending coals to Middlesbrough, to procure the establishment of fair and equal tolls and charges.

Mr. RICKARDS: Where do you allege that the effect of the bill will be to injure the owners of collieries?

Bidder: We are sending 30,000 tons of coal a week to Middlesbrough, and Cleveland which lies further on. This line, if made, will be the best route for our coal, and the bill proposes to apply to it the existing system of rates. Our case is that the existing system works unfairly and oppressively, and we object to its extension, unless accompanied with proper safeguards. Questions of tolls and rates, and of their renewal and extension, are questions of degree; but important bodies, like my clients, are entitled to a voice in the matter. The decision in the *North Staffordshire Railway Bill*, 1866 (Smeth. 120), is

directly in point; and there are other cases of the same sort.

Saunders (for promoters): It cannot be contended that any one who asks for a *locus standi*, with the object, say of proposing a reduction of rates or fares, is at once to obtain it. (*London and North Western Railway Bill*, 1868; *Cliff. & Steph. 147.*)

Mr. RICKARDS: In that case the petitioners were objecting to an existing level crossing, authorised by a former Act, although the bill before the Referees did not affect that level crossing in the least, but related exclusively to other matters. Here, however, the objection is that certain existing tolls and charges said to be injurious to the petitioners, are going to be extended to the new line.

Saunders: That is not the point taken in their petition. They object to the retention of rates and tolls, authorised by previous Acts upon the existing system of the North Eastern. It does not matter to the petitioners what the rates are upon the new piece of line, for they do not carry to Middlesbrough.

Mr. RICKARDS: They say they send to ironworks "in the north eastern part of Yorkshire," which would include Middlesbrough?

Saunders: Their real grievance is as to existing rates. There is not a word about the bill in their petition, except the paragraph at the end, which says, "that the preamble is untrue."

Mr. RICKARDS: It is certainly a great pity that petitions are not drawn with more direct reference to the provisions of the bill.

Saunders: They do not even object to the maximum rates, but to the mode in which the company have exercised their powers of charging rates. The North Eastern system has been built up by the amalgamation of a number of small lines, and on each of those transfers the freighters and traders interested were heard. Accordingly, if the petitioners are allowed to object afresh to maximum rates, that would be a rehearing of questions already decided by Parliament. If traders are entitled to be heard against this bill in respect of maximum rates, they would be entitled to be heard against any bill any railway company might promote for an alteration or addition to any part of their system. As to the allegation that rates have been levied unfairly or preferentially, the petitioners have not been before the Court of Common Pleas, under Mr. Cardwell's Act, and we may assume accordingly that the petitioners have really nothing to object to. The whole question of rates, moreover, is raised by the corporation of Middlesbrough; and it is unnecessary that a second body should be heard upon the same subject. Usually, objections are expressly raised by a petition to the extension of rates to the new line of railway.

Mr. RICKARDS: No doubt; and here we can only collect, by inference, that the petitioners raise that objection. But if freighters and traders are ever to be heard against rates, justice would seem to require that they should be heard just as much against an extension of existing rates to a new line, as against the bill imposing the rates originally?

Saunders: Parliament having once adopted a scale of rates for a particular railway, that scale

may be taken as a fair one for any extension of the same railway. If, however, you give the traders and freighters a *locus standi* at all, I submit that it should be limited to the extension of tolls to the new railway, and should not extend to existing rates upon the old system.

Locus standi Disallowed.

Agents for Petitioners, Wyatt & Hoskins.

NORTH BRITISH, ARBROATH, AND MONTROSE RAILWAY BILL.

24th April, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.)

Petition of the CALEDONIAN RAILWAY COMPANY.

Railway—Junctions—Facilities—Competition—Perpetual Working—Subscription—Joint Committee—Statutory Bar to Opposition—Must be Construed Strictly—General Locus Standi.

A bill for the construction of a railway was opposed by the Caledonian company, whose line the proposed railway would join at either end. It was admitted that competition would be created with the Caledonian company, and further that lands and facilities affecting them were taken. A statutory bar to opposition on their part was, however, pleaded, consisting of a clause in an Act of 1866, restraining the Caledonian company, for a space of five years, from opposing any bill promoted by the North British company "for the extension or completion by that company of a line of railway from the railway of the Caledonian company" to certain points named, the railway now proposed being included within those limits. The petition for the bill was sealed by the North British company, who were to man and work the line in perpetuity. They did not, however, subscribe; and the construction of the line, though it was to be superintended by a joint committee, was to be, in the first instance, at least, at the expense of the new company formed by the bill:

Held, that a restriction of the nature sought to be enforced must be construed strictly; and that the petitioners were entitled, not merely to a hearing as to the formation of junctions and the exercise of facilities (which the promoters did not dispute), but to a general *locus standi*.

This was a bill to incorporate a company by the name of "the North British, Arbroath, and Montrose railway company," and to enable them to construct a railway from Arbroath to Montrose.

The Caledonian company, from whose line the proposed railway would start, rejoining it at the other extremity, petitioned against the bill. It was not denied that competition would be established with the petitioners, or that they would, in ordinary circumstances, be entitled to a *locus standi* as of right, the proposed line forming junctions at either extremity with the Caledonian. It was alleged, however, that the petitioners were expressly debarred by statute from opposing, directly or indirectly, for a space of five years, from 1866, any bill promoted by the North British railway, "for the extension or completion by that company of a line or lines of railway from the railway of the (Caledonian) company at Arbroath to Aberdeen, *via* Montrose, Bervie, and Stonehaven," "except for the purpose of securing the insertion therein of proper provisions" with respect to the junction, or junctions, and with respect to running powers and facilities. The petitioners claimed a general *locus standi*.

Venables, Q.C. (for petitioners): Though the petition for the bill has been sealed by the North British company, and it is, therefore, in one sense, a bill promoted by that company, it is not a bill "for the extension or completion by that company" of any line of railway. The bill is to incorporate a new company, and though, by a scheduled agreement, the North British are to work the line in perpetuity when made, there is no provision whatever for their making any part of the line themselves; and they are not to contribute any portion of the capital. If the founders of this independent company promoted the bill in their own names, there could be no doubt about our *locus standi*. How can the North British company acquire rights and exclude us, by the mere formality of sealing the application of another company? The Great Western, or any other company, which had nothing to do with the line, might equally have sealed the petition. The restriction placed upon us, as to opposition, expires this session; and because we were not to oppose a new line, all the way from Arbroath to Aberdeen, it does not follow that we might not object to a loop line, going only part of the way, and tapping our system at both ends. Hence, our *locus standi* is not displaced by the Act of 1866.

Clerk, Q.C. (for promoters): The Caledonian will have a right to appear, to secure provisions with respect to junctions and to running powers and facilities. But their opposition generally is precluded by the Act of 1866, which took into account the entire circumstances of East Coast railway traffic in Scotland, and the relative positions of the North British and Caledonian. The question, therefore, is not by whom this bill is technically promoted; but, is the line such as was contemplated by the Act of 1866? This may be only the first step in the construction of a line from Arbroath to Aberdeen. The Caledonian could not oppose such a line as a whole: why should they be heard against a part? The

fact of our seal to the petition must be taken in connection with the preamble, and the agreement scheduled to the bill. The works are to be constructed under the direction and control of a joint committee, appointed by the North British and the proposed company; but the line is to be worked in perpetuity, and provided with all necessary plant, officers, and servants, by the North British. The staff is to be paid by the North British, and exclusively under their control. Technically, this may not be a North British line, but substantially it is.

Mr. RICKARDS: Must not a restriction in an Act of Parliament, of the nature which you seek to enforce, be construed strictly?

Clerk: It must be looked at with reference to the circumstances which Parliament had in view in 1866, when they were handing over to the Caledonian company a line common to them and the North British. We do not subscribe directly under the bill; but half the proposed share capital is reserved for holders of North British stock. The petitioners are no more landowners now than in 1866, when this clause was passed.

Locus standi Allowed.

Agents for Bill, *Simson & Wakeford.*

Agents for Petitioners, *Grahames & Wardlaw.*

CARDIFF IMPROVEMENT BILL.

28th April, 1871—(Before Mr. WYNN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petitions of (1) the GREAT WESTERN AND TAFF VALE RAILWAY COMPANIES; (2) the RHYMEY RAILWAY COMPANY; (3) the MARQUIS OF BUTE AND HIS TRUSTEES.

Improvement Bill—Municipal Corporation and Local Board—Owners and Ratepayers—Railway Companies affected as—Representation—Public Health Acts—Superseded by Bill—Definition of "Streets"—New Streets—Railway Approaches—New Buildings—Regulations as to—Railway Stations—Sewers—Interference with Cellars and Vaults—Educational Scheme—Diseased Animals—Destruction of Cattle Pens—Cattle Trucks—Special Legislation—Permissive Powers, change of into Compulsory—Legal Liabilities, alteration in Owner's.

An improvement bill promoted by the corporation of Cardiff, proposed to repeal, as far as that borough was concerned, the provisions of the Local Government Act, and other general Acts in force in the borough, and to make a complete local code, adopting, and in some respects varying, the provisions of the existing law. Petitions were presented by a large landowner in Cardiff, and by railway companies having stations within the borough, who complained both as landowners and ratepayers that, under the powers given by the bill, the corporation

might interfere with new streets, including the private approaches to the stations, impose regulations as to the height of buildings, not excepting the railway stations, and otherwise prejudicially affect the property of the petitioners:

Held, that the variations proposed by the bill in the existing public Acts were such as entitled all the petitioners to appear, and that their *locus standi* could not be limited to clauses.

This was an improvement bill promoted by the corporation of Cardiff; and the petitioners complained that in various ways they would be prejudicially affected by its provisions. The interpretation clause defined "street" as applying to, and including, "any highway or road, and any public bridge (not being a county bridge, or a portion of road belonging thereto), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and the parts of any such highway, road, bridge, lane, footway, square, court, alley or passage, within the borough, whether made before or after the commencement of this Act." Clause 32 empowered the corporation to stop streets from time to time, and Clause 47 provided that "if at any time, any street (not being a highway repairable by the inhabitants at large)" were not "sewered, drained, levelled, curbed, flagged, asphalted, channelled, and paved or macadamised to the satisfaction of the Council," they might at any time order that it be freed from obstruction and inequalities, and drained, paved, &c., by and at the expense of the owners of the buildings or lands in such street. Clause 5 provided for the repeal of the Public Health Acts as regarded the borough; other clauses gave the Town Council authority to interfere in the case of new buildings and regulate their height, &c., to make bye-laws as to the levels, width, and construction of new streets and courts; (section 125) to make the sewers necessary for the effectual sewerage of the borough, and convert any open drains, or water-courses into sewers, carrying sewers, if needful, "through and across underground cellars and vaults under any streets in the borough, doing as little damage as may be, and making full compensation for any damage done," and constructing any sewer or work, "under, through, or on any road, thoroughfare, or place, beyond the borough, or through or under any lands within, or beyond the borough," making full compensation to the owners and occupiers. The bill also empowered the Town Council, to provide a town-hall, a recreation ground, public clocks, &c., and proposed "a scheme for Wells's charity," the costs of which were to be paid out of the rates. It also empowered the justices (section 229) to order any diseased animals to be destroyed, together with any pens, hurdles, straw, or other articles, which, in their judgment, might have been affected thereby.

The *locus standi* of the Great Western and Taff Vale railway companies was objected to, because (1) no compulsory or other power is

sought to take or interfere with lands or property belonging to the petitioners, or to acquire any rights or easements therein; (2) their interests in the borough are not different from those of the inhabitants or other owners and occupiers of property; (3) the petitioners are not entitled to any differential rates or any special protection beyond what is provided for; (4) the objections raised to the bill affect parties whom petitioners do not represent; (5) they do not allege any ground, and have not any interest entitling them to be heard consistently with practice.

The *locus standi* of the Rhymney railway company was objected to on similar grounds.

The *locus standi* of the Marquis of Bute and his trustees was objected to, on grounds 1, 2, 4, and 5; and also because (3) if the petitioners can show that they have any direct interest different from the general body of ratepayers and inhabitants, the petitioners' opposition should be confined to such points of difference, and not be allowed to traverse the whole bill.

Saunders (for the Great Western and Taft Vale railway companies): Under the definition of the word "street," the private roads and approaches to the stations may be interfered with, and we shall ask the Committee to insert the limitation contained in the Wolverhampton Improvement Act, 1869—"but does not include any road, carriage-way, bridge, foot-way, path-way, or approach belonging to any railway company." We object also to the proposed repeal of the public Acts, for, though the bill may embody most of the provisions in those Acts, it varies them in material ways affecting us. As to the authority claimed by the corporation over new buildings, it might apply to any alterations in our station; but the railway engineer, not the district surveyor, is obviously the person who best knows the wants of the railway companies. Under section 125, a drain by the side of the railway might be deemed a watercourse, and might be dealt with by the corporation. This section affects us as landowners, as much as if the promoters had scheduled us.

Mr. RICKARDS: Do you contend that every landowner within the borough has a *locus standi*? Is there any difference between your case and that of any other landowner?

Saunders: I do not say there is any; and it would be a perfectly legitimate conclusion from my argument that every landowner in the borough would have a *locus standi*. Compulsory powers are sought for as to lands, not only within, but beyond the borough, and as landowners we are therefore entitled to be heard against the bill.

Mr. RICKARDS: Therefore every landowner beyond the borough, whose land may be affected, would have a *locus standi*?

Saunders: Yes. To the proposal to provide a town-hall and recreation grounds, and to defray the costs of an educational scheme out of the rates, we object as ratepayers, having a distinct interest from that of other ratepayers, and not being interested in education within the borough; and we also object as landowners, inasmuch as the value of our property will be depreciated by its increased liability to rates. Section 229, as to diseased

animals, gives a very unusual power; and under it our cattle trucks, with the pens and hurdles at our station, might be destroyed.

Mr. RICKARDS: We should like some description of the approach to the station, which you say may be interfered with?

Mains (solicitor for the Great Western company): The road is constructed over the property of the company; it is maintained and repaired by them; and over it they exercise an absolute right of admitting or excluding the public at their discretion.

Bidder (for the Rhymney railway company): My case is identical with that just stated, and I crave the benefit of the arguments just addressed to the Court. Our station-yard is enclosed within gates, and is a private thoroughfare in every sense; yet Clause 47 would empower the corporation to insist on our paving it, or altering the level as they thought fit. This is a distinct interference with our rights as landowners; and no doubt any other ratepayer, being also an owner, and affected as we are by the bill, would be entitled to be heard against it, *quod owner*. It is unreasonable to give the corporation power to control the construction of station buildings; and the power to stop streets not only affects our station-yard, but our approaches to it, and the traffic to our station. In a similar case the Court has already decided that a railway company should be heard. (*Liverpool Improvement Bill*, 1867; *Cliff*, and *Steph*. 48.) The sewage clauses give the corporation authority to carry sewers through, under, and across even the line of railway itself, and thus might cause the stoppage of our traffic for the time. Under the rating clauses we have a distinct *locus standi*, for section 308 provides for an improvement rate, to which land used as a railway is to be assessed at one-fourth. That is a direct admission by the promoters that, with regard to that rate, we should be dealt with in an exceptional manner. We are, therefore, entitled to go before the Committee and urge that one-fourth is too much, or that no additional burdens should be cast upon us for objects in which we have no interest. (*St. Helen's Improvement Bill*, 1869; *Cliff*, and *Steph*. 52.)

Michael (for promoters): *St. Helen's* comprised several jurisdictions, in some of which there were special exemptions from rates. The bill was one to remove these exemptions, and it therefore imposed a new burden upon the owners.

Bidder: That may be, but the principle laid down by a member of the Court in that case (*Id.* 55) as to landowners upon whom increased taxation is cast, applies here.

Clerk, Q.C. (for the Marquis of Bute): The area of the borough comprises 1,756 acres, of which 1,285 are the property of Lord Bute. This is not merely a consolidation bill; the preamble expressly recites the expediency of extending the powers of the corporation in matters of local government: and there is hardly a single clause which does not affect Lord Bute as owner of this large property. If the question were merely one as to the alteration of a rate it might be doubtful whether a single ratepayer, however large, stood in any more favourable position than a great number of ratepayers, in appealing

here against the decision of the local authority. (*Northampton Markets Bill*, 1870; 2 Cliff. & Steph. 6.) But it is chiefly as an owner of property that Lord Bute will be affected by the bill. For example, a million and a half of money has been spent upon the petitioner's docks, and through those docks there are many roads falling within the definition of the word "street" in the interpretation clause. Over those roads the local board has a jurisdiction which it has never exercised; but the corporation now take enlarged powers to deal with them. Again, there is an extensive area not yet built over, and the corporation take power to do that which they cannot do under the general Acts now in force—not only to define the width and the level of new streets there, but to say how far a street shall extend, and what shall be the length of it. The powers sought for by the corporation over the erection of new buildings, would seriously prejudice an owner of property in Cardiff. Section 311 provides that the owner, instead of the occupier, shall be rated in certain cases. It is true that in the Local Government Act, 1858, there is a similar clause, but it contains a proviso that in such cases the owner shall be assessed upon a reduced estimate, "not being less than two-thirds nor more than four-fifths" of the net annual value (sec. 55). The words in the general Act, "nor more than four-fifths" are omitted from the clause in the bill.

Michael: That is the only difference?

Clerk: Yes. But owing to that difference you would be empowered to assess the owner at 99 per cent. of the net annual value. That is a material change in the existing law, upon which the owner of the greater part of Cardiff has a right to be heard. As to the improvement rate, the case is not to be distinguished from the *St. Helen's Bill* (Cliff. & Steph. 55), for it is here proposed to place a considerable amount of additional taxation on the land, besides subjecting the petitioner to new restrictions in the use of his property.

Mr. RICKARDS: How does the improvement rate affect the owner?

Clerk: By subjecting his property to fresh burdens, and so diminishing its value.

Michael (for promoters): The *St. Helen's* case decides that an owner is entitled to be heard when the bill imposes a burden upon his property, *quod* owner, as distinct from ratepayer; but no such burden is imposed here. Money expended, by an improvement rate, on the improvement of property must increase, not diminish, the value of that property, and affects the ratepayer, not the owner. The incidence of the rates is not altered; and Clause 311 is in substance taken from the Local Government Act, 1858, which says, "The owner instead of the occupier may, at the option of the local board, be rated" in certain cases. The limit of "not more than four-fifths" is certainly omitted in the bill, and Clause 311 says that the owner in these cases "shall be rated." So far, these are variations; but it does not follow that any greater burden will be imposed upon the owner under the bill than might have been imposed under the Local Government Act.

Mr. RICKARDS: This clause by its terms makes

the owner liable, if the council think fit, to the full value of the property; and the clause is also compulsory, while in the general Acts it is permissive?

Michael: I admit that the present limitation is not continued in the bill, but it does not follow that any injury will thereby be inflicted upon the owner.

Mr. RICKARDS: If an owner does not wish that his property should be rated at its full value, he naturally dislikes a bill under which such a power may be exercised. The clause is also imperative, and leaves no discretion to the local board; while, if the law remained as it now is, a large owner of property in the borough might calculate upon being able so to influence the council that they would not exercise this power adversely to him?

Michael: The change contemplated is really beneficial to the owner, because, while he will receive a full rate from the occupier, he will pay to the council only a specified proportion. Thus, if the rate amounts to 20s. a year upon a tenement, he receives that sum, but is only called on to pay 13s. 4d., so that he has a chance of gaining 6s. 8d.

Mr. RICKARDS: I can conceive that an owner may not take the same view of the advantage to him of being made to pay the whole rate?

Michael: In order to avoid the expense of collecting a number of small accounts, it answers the purpose of the local board to submit in such cases to a deduction upon the rates, and allow the owner a percentage for collecting them.

Mr. RICKARDS: That may be so; but, for the purposes of *locus standi*, the owner is entitled to say, "You propose to subject me, for the first time, to larger powers of taxation than you now possess; and though you say that you thereby confer an advantage upon me, I do not take the same view as you do. At all events, it is enough to give me a *locus standi* that the clause alters my legal liabilities?"

Michael: If you hold that the Marquis of Bute is entitled to a *locus standi*, it should be restricted to that one point. As to the definition of "street" in the bill, the Public Health Act, 1848, is in the same terms.

Mr. RICKARDS: Is Cardiff under the Local Government Act?

Michael: Yes; and the other Acts amending it. This bill identifies more closely the interests of the corporation and the local board, but it in no way alters the existing liabilities of ratepayers or owners of property. The definition of "street" remaining the same as it now is, there is no need to exempt the approaches of a railway. If the power exists, we only continue the power; if it does not exist, the bill will not give it to us. Private roads can only be affected under the powers applicable in such cases, and these powers are precisely the same under the bill as they are under the general Acts. The corporation cannot interfere with the approaches to a railway. They have never done so hitherto, and no new powers of this description are contained in the bill. As to the exemption of railway companies to the extent of one-fourth, it exists at present, and according to the decision in the *Swansea Canal Transfer Bill* (Smith. 170)

be no *locus standi* against the mere continue an existing power of rating. ions as to buildings are identical with in force under the bye-laws.

The power of making bye-laws does include any to regulate the height of so that a bye-law to that effect would *res.*

: In every set of bye-laws I have seen, regulation as to the height of build- portant element in securing the proper of air in a town. Such a regulation Cardiff, but I cannot say that it is ie petitioners may therefore have a li on this ground; but, if so, it should ted to clauses. We do not seek to railway companies as owners of pro-, as ratepayers, they are not affected from other ratepayers. Clause 47 of empowering the local board to cause be sewered, &c., is a reproduction of of the Public Health Act, 1848, and of the Local Government Act, 1858. "Curbed" and "asphalted" are new are the words, "and otherwise com- th such materials, at such levels, with us," &c. And Clause 78, calling on vacant lands adjoining streets to fence, ny existing Act.

CKARDS: Clause 47 would apply to ads. Would it not give the local board r the approaches to the railways?

: The board have never exercised such and I doubt whether they could do so s section. We have no power over ads, kept solely in the occupation and control of private individuals or com- To justify the board in interfering, the st be such a thoroughfare as to make ry, in the sanitary interests of the town, ould be sewered and paved.

AIEMAN (after deliberation): The *locus* all the petitioners is *Allowed*.

l: Will you limit their *locus standi* to : I suggested?

AIEMAN: No; we give them a general *adi*.

for Bill, Wyatt & Hoskins.

for the Great Western and Taff Vale ompanies, Young, Maples, & Co.

for the Rhymney railway company, o.

for the Marquis of Bute and his Dorington & Co.

AND CUMBRAE LIGHTHOUSES TRUST BILL.

ril, 1871.—(Before Mr. WYNN, M.P., nan; Mr. BONHAM-CARTER; and Mr. ads.)

of (1) the TRUSTEES OF THE CLYDE ATION; (2) the MERCHANTS' HOUSE OF

GLASGOW; (3) the TRADES' HOUSE OF GLASGOW (4) CORPORATION OF GLASGOW; (5) Sir MICHAEL R. S. STEWART, Bart.

Navigation Trustees—Lighthouse Board—Recon- stitution of Trust—Statutory Trust—Represent- ation—Exception to Doctrine of—Municipal Authority—Foreshire—Surplus Tolls paid to Navigation Trust—Agency.

In an Act passed in 1754, establishing a light- house board, certain civic officials were spe- cifically mentioned as trustees, and three in- dividuals were also appointed, with their heirs male for ever. A bill was now pro- moted for the reconstitution of the trust, none of these individuals being entitled to act under the new scheme. The bill was opposed by the trustees, whose *locus standi* was not objected to, but it was urged with regard to four sets of petitioners, who would cease to be trustees under the bill, that they were represented by the body of which they were component parts. It ap- peared that the trustees were themselves promoting a bill which would change the constitution of the trust, and oust the peti- tioners from their position on it:

Held, that the ordinary doctrine of representa- tion did not apply here, the statutory rights of individual members of the body being affected by the decision of the representa- tive body.

A petition was also presented against the same bill by navigation trustees, who complained that under it they would be deprived of five-sixths of certain surplus dues which the existing lighthouse board now handed over to them for the improvement of the navigation, but which the bill proposed to apply otherwise. It was stated that, in the recitals of private Acts affecting the trust, the navigation trustees had represented to Par- liament that these surplus dues formed a part of their available revenue, and had borrowed money on this security along with the rates levied by them: they however had no statutory title to the dues, and in applying them seem to have acted merely as the agents of the lighthouse board:

Held, that they had no *locus standi*.

Upon a proposal to take parts of the fore- shore by agreement, a petitioner will not be heard to contend that certain other parts of the bill empower the promoters to

establish works in the sea opposite his fore-shore, whereby he may suffer injury.

The bill recited that in 1754 an Act was passed constituting a trust for lighting the mouth of the Clyde, and for improving the navigation, the surplus tolls available after providing for the maintenance of lighthouses being directed to be applied, first, to the removal of shoals or flats below Greenock, and as to the remainder, one-sixth in improving the harbour of Greenock, and the other five-sixths in improving the navigation of the Clyde above Greenock; that at that time the Clyde navigation trust was not created; but for some years past, these five-sixths had been paid to the Clyde trustees, whose jurisdiction extended from Glasgow to Newark, or Port Glasgow, while the jurisdiction of the Cumbræ trust extended from below Port Glasgow to the firth of Clyde. The bill further recited that the Clyde trustees had powers of charging rates upon vessels for the use of that portion of the river within their jurisdiction, and that there was also a body of trustees with statutory powers to impose rates on shipping for the maintenance of the harbour of Greenock; that it was expedient that the rates leviable in respect of the lighthouses and other works authorised by the Act of 1754 should not be applied towards the maintenance of Greenock harbour, or the portion of the Clyde within the jurisdiction of the Clyde trustees; that the rates authorised by the Act of 1754 should be reduced; and that the construction of the trust created under that Act should be altered, and the lighthouses, beacons, and other property of the trust vested in a new body of trustees.

The Clyde trustees in their petition stated that they had deepened and greatly improved the navigation between Newark Castle and Greenock (a distance of nearly 3 miles); that the surplus rates hitherto paid to them by the Cumbræ lighthouse board had been treated as a part of their available property; that it would be unfair and unjust to them, and a breach of faith to their bondholders, to deprive them of the five-sixths; and that under the existing arrangement, by which the Cumbræ board took advantage of the powerful dredging staff and other machinery belonging to the petitioners for the improvement of the navigation above Greenock, this improvement was effected in the most complete and economical manner, and was very beneficial for the public interest.

The other petitioners sought to be heard on the ground that they would be prejudicially affected by the proposed change in the constitution of the trust. The Act of 1754 constituted the following persons as the Cumbræ Lighthouse trustees:—the Earl of Eglintoun and his heirs, Lord Cathcart and his heirs, John Stewart Shaw, of Greenock (now represented by the petitioner, Sir Michael R. Shaw Stewart) and his heirs; the Provost, Baillics, Dean of Guild, and Convener of the city of Glasgow, for the time being, with their immediate predecessors; the two Baillics of Greenock, and the Baillie of Port Glasgow. Clause 8 of the bill proposed to

substitute for these trustees, 12 trustees to be elected by the ratepayers of Glasgow, 6 by ratepayers of Greenock, and 2 by ratepayers of Port Glasgow, and also 3 *ex-officio* members, the Chairmen of the Clyde navigation trust, the Greenock harbour trust, and the Port of Glasgow harbour trust.

Sir M. S. Stewart further complained that, under Clause 31, the new trustees might erect, place, and maintain "new or additional lighthouses lights, beacons, buoys, and land or sea marks" in the Clyde within their jurisdiction, and that he would thus be injuriously affected as an owner of foreshore.

The *locus standi* of the trustees of the Clyde navigation was objected to, because (1) the petitioners have no legal right or interest in the portion of the firth or river of Clyde to which the bill relates, or any legal power to construct works in or otherwise interfere with that portion of the firth or river; (2) the petitioners do not pay any of the rates levied by the existing Cumbræ lighthouse trustees, and they are not under the bill required to pay any such rates; (3) they have no legal right or interest in the rates leviable by the existing Cumbræ lighthouse trustees, nor in the rates which are, by the bill, proposed to be levied; (4) the petitioners have no right to insist upon any of the funds received by, or belonging to, the existing Cumbræ lighthouse trustees being expended on any portion of the firth or river within the limits of the petitioners' jurisdiction; (5) they are not entitled to represent any of the persons who, under the bill, will be liable to pay rates; (6) the circumstance that the petitioners have included in their estimate of available property surplus funds belonging to the Cumbræ trustees, to which the petitioners have no legal right, does not entitle them to be heard against the bill; (7) they have no interest in the constitution of the trust, or in the amount of money to be borrowed by the trustees to be appointed, which entitles them to be heard; (8) the petitioners cannot be heard according to practice.

The *locus standi* of the Merchants' House of Glasgow was objected to, because (1) the petitioners have no right or interest in any of the matters dealt with in the bill; (2) the Dean of Guild and his immediate predecessor, are not entitled to be heard individually against the bill, or the change of the constitution of the Cumbræ lighthouse trust, being individual members of the whole body of the Cumbræ lighthouse trustees, who have, as such, presented a petition against the bill; (3) the Merchants' House of Glasgow are not entitled to be heard on behalf of the Dean of Guild or of his immediate predecessor; (4) the petitioners cannot be heard according to practice.

The *locus standi* of the Trades' House of Glasgow was objected to on similar grounds.

The *locus standi* of the Lord Provost, Magistrates, and Town Council of Glasgow was objected to, because (1) their claim (which was not admitted) to be the owners of the alveus or channel of the river Clyde would give them no right to be heard, inasmuch as no new right over the alveus or channel was sought, and no lands or property of theirs would be taken compel-

so; (2) the bill did not interfere with the alleged right of the petitioners to appoint a bailie to rule over the waters and correct injuries and enormities committed upon the river Clyde, with other privileges; (3) petitioners had no right or interest in any of the matters dealt with in the bill; (4) they had no right to be heard as to the change in the constitution of the Cumbrae lighthouse trustees; (5) petitioners did not pay any of the rates levied by the lighthouse trustees, nor would they be liable to any of the rates proposed by the bill, and they were not entitled to be heard on behalf of any of the persons who now paid, or would be required to pay, rates, those persons being owners of ships navigating the firth and river of Clyde, who were entitled to be heard by themselves if they felt aggrieved; nor were the petitioners entitled to be heard as to the proposed application of any rates; (6) petitioners were not parties to any arrangement as to the bill of last session, and the arrangement then made had reference only to that bill; (7 and 8) the Lord Provost, Bailies, Dean of Guild, and Convener of the city of Glasgow for the time being, and their immediate predecessors in office, were individual Cumbrae lighthouse trustees, and not entitled to be heard as such, together or separately, against the bill, the body having presented a petition against it; (9) the petitioners could not be heard according to practice.

The *locus standi* of Sir Michael Robert Shaw Stewart was objected to, because (1) no lands of his will be taken, or interfered with compulsorily; (2) the petitioner is not entitled to complain of the transfer of the powers of the existing Act to a new body of trustees; and such powers do not affect him, or his property; (3) the petitioner has, individually, no right or interest in any of the matters dealt with. In so far as the petition relates to the interests of the town and harbour of Greenock, the town council and the harbour trustees are its proper representatives, and the harbour trustees have petitioned against the bill. The petitioner has no greater interest than any of the public in any part of the river or firth of Clyde, or in any of the rates leviable in respect thereof; (4) the petitioner, as one of the existing Cumbrae lighthouse trustees is not entitled to be heard individually; (5) no sufficient grounds, according to practice, are alleged.

Clerk, Q.C. (for Clyde navigation trust): We now receive nearly the whole of the five-sixths of surplus dues (about £6000 a-year) for the improvement of the navigation above Greenock. It is objected that we have no legal right to this surplus, but upon the credit of that and other sources of revenue, we have borrowed large sums which we have spent as the Act of 1754 contemplated. The promoters of the bill are not the Cumbrae trustees, but a body of shipowners. The Cumbrae trustees, who are also promoting a bill, against which we appear, have never disputed our legal right to the five-sixths of their surplus. For more than a century we have been the persons on whom Parliament has imposed the obligation of maintaining the upper navigation, and before this surplus is taken away from us, we should have an opportunity of showing Parliament that the trade of Glasgow will thereby

sustain a serious injury. If we have no legal right to this money, an Act of Parliament is not necessary to take it away from us. We have expended £5,000,000 in improving the navigation of the Clyde, and however deep we may make the channel down to Newark, it will be valueless if no provision is made for deepening the river from that point to the sea. Under this bill no such provision will be made, and it is essential that a public trust like ours should be heard to secure an adequate fund for the removal of flats below Newark. Otherwise, the whole of our vast outlay, down to that point, might be rendered useless. It may be quite right to relieve the trade from high dues for lighting; but, in repealing the Act of 1754, care should be taken to provide funds for doing that which has been hitherto done by us. The new trust proposed by the bill wishes to evade the obligations imposed by Parliament in 1754. The fact that we were not specifically mentioned in that Act as the persons to receive the surplus is immaterial. Our trust did not then exist, but we received Parliamentary powers a year or two afterwards, and as the Cumbrae trustees were bound to apply five-sixths of their surplus in improving the upper part of the river, and could not expend this sum themselves, because all their powers over the upper navigation ceased when the Clyde trust was created, there was but one course which they could legally pursue, namely, hand their surplus over to us. We ought surely to be heard against the proposal, not by the Cumbrae trustees, but by a body of strangers, to deprive us of funds so long expended by us upon this navigation.

Mundell, Q.C. (for the Trades' house): The trades' house of Glasgow is a body comprising 15 incorporations of handicraftsmen, and their assistants, who, in 1605, were incorporated by letters of guildry. The head of the trades' house is the deacon convener, who, under the Act of 1754, is an *ex officio* member of the Cumbrae trust, along with his predecessor in office. But the convener and ex-convener are left out of the new trust; and in the bill promoted by the Cumbrae trustees, they propose to exclude the ex-convener, so that the existing trustees, themselves, do not represent us by supporting the existing constitution of the trust. Though shareholders in a company are bound by the common seal, yet the moment you show a distinct interest on the part of any one shareholder, he is allowed to be heard. The Cumbrae trustees, who are said to represent us here, themselves seek to destroy half our representation.

Cripps, Q.C. (for Sir Michael Shaw Stewart): The objection to my *locus standi* is that the petitioner is a member of a corporate body, and is therefore represented by them. But in this case he derives his right under an Act of Parliament, in which he and his heirs are specifically mentioned. Can it be said that he is not to be heard upon a proposal to take away that right, and vest it in other parties? Suppose he were one of a set of trustees, and an application were made to the Court of Chancery to divest him of his trust. The Court would allow him to appear, not only jointly with his co-trustees, but in his own person, for the Court

might say it was proper to remove the trustees as a body, but not individually, and the petitioner here would have a right to say that he had a right to be a member of the new body, whatever it was. Again, the Act of 1754 provided not only that the petitioner should act on this trust, but his heirs male. A statutory right, so conferred, cannot be taken away from him behind his back. Besides, the petitioner is entitled to the foreshore extending for a distance of about 11 miles along the south of the Clyde, between Newark Castle and Wemyss Bay, and he complains that under Clause 31 works may be erected there by the new trustees, and his rights injuriously affected.

Rodwell, Q.C. (for promoters): Those are not compulsory powers.

Cripps: It is true the promoters take power to "acquire by agreement such lands as they may think necessary for the said purpose," and so far the petitioner does not complain; but the value of his foreshore may be seriously depreciated by what is done exactly opposite the foreshore, perhaps cutting off his access seaward, or preventing him from turning his foreshore to the best account. That proposal in the bill, of itself, gives him a right to appear and demand protective clauses.

Simson, Parliamentary Agent (for the Merchants' House at Glasgow, and the lord provost, magistrates, and town council): The Merchants' House, of which the dean of guild is the head, was incorporated in 1605, and represents not only the trading community but the professional classes in Glasgow. It was at the instance of this body, and at their own cost, that the Act of 1754 was obtained, their only stipulation being that the dean and ex-dean of guild, and their successors, should for ever be trustees for carrying the Act into execution. It is now proposed to deprive them of a right which, since 1754, they have exercised for the public benefit. Even the trustees themselves would not be entitled to oust any of their colleagues without giving them a hearing against the bill, and what they cannot do, strangers, in the position of the promoters, can do still less. As to the town council of Glasgow, the provost and magistrates, with their immediate predecessors, number 15, and constitute a majority of the present trust; but the bill proposes to exclude every one of them.

Mr. RICKARDS: The whole body of existing trustees petition?

Simson: No doubt, but the body represents Greenock, Port Glasgow, and other interests besides those of Glasgow. They could only be heard to protect the interests of the whole trust, and not to protect any distinct interests which might be affected by the bill. Glasgow, therefore, is not represented by the trustees as a body. In the *Caledonian and Scottish North Eastern* case (Cliff. and Steph. *Practice*, 85), the royal burghs of Scotland were held to represent the trading interests of their respective towns, and to be therefore entitled to be heard on any matters affecting trade. Therefore, apart from the fact that the corporation of Glasgow are here as members of this trust, they have a right to be heard against the bill under that decision, the trade and commerce of Glasgow of

course depending on the proper maintenance of the navigation of the Clyde. The Court has a discretionary power to admit us as the municipal authority, under the S. O. We also complain in our petition that, by a royal charter of 1636, the alveus of the Clyde was vested in us, and we were empowered to elect a bailie to rule over the waters, and "correct injuries and enormities" there committed, and that several provisions of the bill would deprive us of the privileges conferred by such charter.

Rodwell (in reply): The bill does not interfere with the privileges claimed by the corporation of Glasgow. Its object is simply the management of the lighthouses in the entrance to the firth of Clyde, and the removal of shoals and flats. The four petitioners last heard are members of the trust, and my objection is that, being component members of one body, they cannot be heard as individuals against a measure opposed by that body. These trustees in their representative capacity have adopted a certain policy with respect to this bill, and in their petition challenge us upon the very question of constitution as well as upon the subordinate points raised by the petitioners. All these questions will therefore be discussed before the Committee, and, in accordance with the principles which have guided the Court in its decisions, the component parts of a body cannot be heard where the body itself is heard. If that principle were not laid down, the petitions which might be presented against a bill would be endless. You must proceed on the assumption that the trustees represent the wishes of the majority; and when we hear that the corporation of Glasgow are so largely represented there, it is strange that they should, in Parliament, run counter to the view taken by the trustees. Before the Committee witnesses may be called representing every one of the separate interests now petitioning, and these separate petitions are therefore unnecessary. In the *Northampton Markets* case (2 Cliff. and Steph. 6) ratepayers were refused a hearing against a bill promoted by the corporation, though the number of petitioners constituted an actual majority of the ratepayers.

Mr. RICKARDS: No doubt we have decided in many cases, where there is a corporate body or a company, that the decision of the majority binds the minority; but those were cases in which the majority had determined upon some particular policy from which the minority dissented. The case before us has this special feature: that the decision of the majority affects the Parliamentary status of individual members of the body. Sir M. S. Stewart, for instance, does not merely dissent from the general policy adopted by the majority, but stands up for his own right to be a member of the trust—a right of which he is deprived by the decision of the majority. This, therefore, is not an ordinary case in which the majority rule the minority upon a question of policy; it is a case in which the majority by their act would actually affect the status of individual members of the body.

Rodwell: The question is, in what capacity these trustees are placed on the board. They are placed there not to protect their own interests or for their own private purposes,

but for the benefit of the public. If this bill really interfered with individual rights, the difficulty raised by the learned Referee might press me. But these individuals owe their appointment to public considerations; they are trustees for the public; and together they form a body which Parliament, from time to time, may alter as the public interests require.

Mr. RICKARDS: One would rather infer from the Act of 1754 that Sir M. S. Stewart and his heirs owe their place on the board to some service rendered by his ancestor, and, if that be so, it seems hard that he should be deprived of this position without being heard?

Rodwell: There may be a distinction between the case of Sir M. S. Stewart and the other petitioners on that point. As to the public bodies represented on the trust, it cannot be said that they have any private interest; they were placed on the trust in their public capacity, and to them the principle of representation clearly applies, the trustees having petitioned, and their *locus standi* not being objected to. With regard to the Clyde navigation trustees, the Cumbræ lighthouse board have merely treated them as their agents, availing themselves of their machinery and appliances. The Clyde trust has no jurisdiction below Port Glasgow, and has no legal interest in this question. The Clyde trust did not exist in 1754, and is not mentioned therefore in the Act. The Cumbræ lighthouse board are the persons entitled to the five-sixths, and in their bill they propose to deal with it.

Simson: The sum received from the Cumbræ lighthouse board has been described in Parliament, over and over again, by the Clyde navigation trustees as a part of their own revenue, and Parliament has authorised them to borrow money on that and other security.

Rodwell: You have no legal right whatever to that money, and the Cumbræ lighthouse board can employ anybody else to do what the Clyde navigation trust has done for them. The Clyde trust can only borrow on their rates and on actual revenue, of which these five-sixths form no part. As to the navigation, it is monstrous to assume that we shall injure it. The promoters are merchants and shipowners, who are interested in getting to Glasgow, and who will spend thousands in improving the navigation.

The CHAIRMAN (after deliberation): The *locus standi* of the petitioners is *Allowed*, excepting the trustees of the Clyde navigation, whose *locus standi* is *Disallowed*.

Agents for Bill, *Grahames & Wardlaw*.

Agents for Trustees of Clyde Navigation; for Merchants' House of Glasgow; and for Lord Provost, &c., of Glasgow, *Simson & Wakeford*.

Agents for Trades' House of Glasgow, *Connell & Hope*.

Agent for Sir M. S. Stewart, *John Graham*.

SOUTHAMPTON DOCKS BILL.

26th April, 1871. — (Before Mr. WYNN, M.P., Chairman; Mr. BONEHAM-CARTER; and Mr. RICKARDS.)

Petition of LONDON AND SOUTH WESTERN RAILWAY COMPANY.

Dock Company—Consolidation Bill—Dock Dues—Revision of—Higher Tolls—Apprehended Injury to Traffic—Railway Company—Owning Steamboats—Carriers—Freighters—Representation—Passenger Fares—Hotel Keepers—The Right to locus standi explained.

A bill was promoted by the Southampton dock company to consolidate their existing Acts, and slightly to vary some of the provisions. The only railway to or from Southampton belonged to the petitioners, who were also owners of steamers trading from the docks of the promoters, and opposed the bill on the ground that the existing dock tolls, sanctioned nearly 30 years ago, were no longer applicable, and ought to be revised. They also urged that the effect of high tolls was to drive away traffic from the port, and thus to injure the traffic on their railway. The alterations of tolls proposed were very slight, but there was a new power taken by the dock company of making "reasonable charges" for work done, or services rendered which were not otherwise expressly provided for. A saving clause had been inserted on behalf of the petitioners, but this was made subject to the other provisions of the Act:

Held, that, under the circumstances, the petitioners were entitled to a *locus standi*.

(*Per Cur.*) The right to *locus standi* depends, not on what a bill does not contain, but on what it does contain. The right is founded on the existence of some power in the bill that would affect the petitioner. It is not enough to say—"we think certain provisions ought to be inserted in the bill." If it were, anybody could get a *locus standi*.

This was a bill to repeal the existing Acts relating to the Southampton docks company, and to re-enact and consolidate the provisions of those Acts, with some slight modifications.

The petitioners were the only railway company running to Southampton, and were also the owners of steamships trading from the Southampton docks to the Channel Islands and certain parts of France, their railway route passing through the docks of the promoters. In 1870 the petitioners paid to the dock company upwards of £15,000, of which £591 were for

dock dues on the tonnage of their steamships, and the balance for dues on goods, passengers, &c. The petitioners contended that the rates authorised in 1836, 1838, and 1843 were no longer applicable to the circumstances of the present day, and sought to have them revised.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs were taken; (2) they were only petitioners against the bill in their individual capacity, and did not represent the numerous other companies and persons owning vessels and using the docks; (3) they paid but a small portion of the dues levied on shipping; (4) they were not owners, importers, or exporters of merchandise carried by their vessels, but only shipowners carrying goods for freight; (5) they did not represent shipping interests generally; (6) the rates and charges to be levied—for the most part a re-enactment of the existing rates—were not to be levied compulsorily, but were rates payable voluntarily for services rendered; (7) the petitioners had no sufficient interest.

Thomas (for petitioners): The last Act of the promoters is 25 years old. All our ships use the docks of the promoters, and pay them large sums; and our railway carries all the traffic and merchandise arriving independently at the docks from other quarters. Obviously, if the rates levied are too high, traffic will be frightened away from the port, and injury done to us. Rates and tolls of an old company can only be revised when the company, for their own purposes, come to Parliament. We are the proper persons to afford information as to the nature and requirements of this transit trade. The tonnage rates on shipping affect us, for they remain unaltered. We ought also to be heard as to rates on goods.

Mr. RICKARDS: Those would only affect you indirectly, being paid by the persons whose goods you carry?

Thomas: We are carriers, no doubt; but we are tied to one road, upon which are these docks with high rates. If these prevent trade from coming, we are the persons who suffer first.

Mr. RICKARDS: There have been plenty of objections by freighters to tolls imposed upon their goods; but your interest seems more remote.

Thomas: Ours is a special case. The rate on goods is paid, ultimately, by the purchaser, not by the freighter; and any diminution in our receipts must be a diminution *pro tanto* of convenience to the public.

Mr. RICKARDS: If you were to bring in a bill to raise the passenger fares on your railway to an exorbitant amount, would the hotel-keepers in Southampton have a right to object that the stream of passengers from whom they benefit was likely thereby to be cut off?

Thomas: The inhabitants of Southampton would be heard when those rates were first imposed. Suppose the bill were one for re-enacting or altering tolls on our railway, and the dock company said: "this is our only access to London, and the bill would be injurious to us"—would they not be heard? Our case is stronger; for we not only carry to Southampton, but through the docks to France. The rates are altered, though, I admit, but slightly. Clause 47

contains a general power to "make reasonable charges for all work done, services rendered, or facilities offered for the despatch of business, not otherwise expressly provided for by this Act." That would give rise to endless questions, and might upset the existing tariff. Our petition points out various additions to the bill, which would be desirable.

Mr. RICKARDS: The right to *locus standi* depends not on what a bill does not contain but on what it does contain. The right is founded on the existence of some power in the bill that would affect the petitioner. It is not enough to say, "we think certain provisions ought to be inserted in the bill;" if it were, anybody could get a *locus standi*.

Thomas: We are a distinct class of traders in ourselves, for we own all the ships in this particular trade to Havre and the Channel Islands.

Clerk, Q.C., (for promoters): The existing rates are re-enacted by this bill, altered somewhat in form, but in amount so minutely that there is no complaint from any consignor or consignee of goods from Southampton, except the railway company. Our total revenue is £74,479, of which they pay us £14,714; and of this amount £11,838 is no charge whatever upon them, being paid by the owners of the goods. If they could get a reduction of the dock-rates, keeping up, meanwhile, the same through rate from London to Havre, they would secure a larger proportion for themselves. They do not complain of insufficient accommodation; and all the other shipping companies are satisfied.

Mr. RICKARDS: Is the scale of tonnage of ships altered in the bill?

Clerk: To meet the definition that will be given in a public Act, we make the charge "per ton," instead of "per registered ton," as hitherto. There will be no actual increase of the tonnage. Clause 47 only relates to services rendered, such as tying up packages which have burst, &c. We have given the petitioners a saving clause.

Thomas: But it runs, "except as expressly provided by this Act."

Clerk: That is a mere form. There is nothing in the bill to prejudice the interests of the petitioners, or to inconvenience their trade. They cannot represent the public, for the public is satisfied.

The Court (after consultation): The *locus standi* of the railway company is *Allowed*.

Agents for Bill, Simson & Wakeford.

Agents for Petitioners, Bircham & Co.

ALBERT LIFE ASSURANCE COMPANY'S BILL.

1st May, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petitions of (1) JOHN ALBERT VARRENTAFT; (2) ROBERT THOMAS LATTEY, no appearance; (3) CHAS. E. LEWIS AND T. BRADSHAW; (4) EDWARD GRATTAN HOLT AND SAMUEL HOLT; (5) LEWIS POCOCK; (6) THE NEW ALBERT LIFE ASSURANCE COMPANY.

ANCE COMPANY (LIMITED) and OTHERS, no appearance; (7) WM. OWEN and OTHERS.

Practice—Short Notice of Hearing—Non-appearance—Petitioners not Excluded by—Adjournment of Court—Referee Personally Interested.

A notice of hearing of objections to *locus standi* appeared in the votes of Saturday, the hearing being fixed for the following Monday. Having regard to this short notice, the Court refused to exclude petitioners, who did not appear by themselves, or their agents, and adjourned the case till the next sitting.

A member of the Court, being interested in the subject-matter of the bill, declined to adjudicate respecting it, even with consent of the parties.

The bill, which was promoted with the sanction of the Court of Chancery, and had passed the House of Lords, was one "to effect a settlement of the affairs of 'The Albert Life Assurance Company,' by arbitration, and for other purposes," and it appointed Lord Cairns as arbitrator, with power to decide, finally and without appeal upon the matters specified.

The petitioners (excepting the New Albert company) were policyholders in the company who objected to its reconstruction, or policyholders, annuitants, or shareholders in other companies or societies absorbed by the Albert life assurance company before its failure; and they sought to be heard against the bill on the ground that this proposed reference to arbitration might prejudicially affect their rights and interests.

Lewis, solicitor (for policyholders) complained that the case had been appointed on Saturday for this (Monday) morning, no notice whatever having been given to the petitioners by the promoters, and that he had learned of the appointment by the merest accident.

Webster, Q.C. (for promoters): It is not the practice for promoters to give notice to opponents.

The CHAIRMAN said the case would be adjourned until to-morrow. And as he was a policyholder in the Albert Life assurance company, he would prefer not to hear the case.

Pember (for petitioners): We shall raise no such objection.

Webster asked the Court to intimate that only those who had appeared to-day, would be allowed to appear to-morrow.

The CHAIRMAN: Considering the shortness of the notice, the Referees will not to-morrow exclude petitioners who have failed to appear to-day.

2nd May, 1871.—(Before Mr. WYNN, M.P., in the chair; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Life Assurance Company—Insolvency of—Companies absorbed by—In Liquidation—and not in Liquidation—Scheme of Arrangement—Reference to Arbitrator—Official Liquidator—Annuitants—Policyholders—Shareholders—Creditors—Representation—Distinct Interest—Legal Remedies—Status of Petitioners changed by Bill—Reconstruction of Company.

A life assurance company, which at various periods had absorbed 20 other companies, became insolvent, and under the direction of the Court of Chancery promoted a bill referring the rights of all parties to arbitration, and giving to the arbitrator wide and summary powers for the adjustment of claims and the administration of assets. The bill was opposed by annuitants and policyholders in certain of the absorbed companies then in process of liquidation, who contended that their existing rights and claims would be prejudiced, these claims having in some instances been allowed by the Court of Chancery, and being easy of enforcement against the shareholders of the respective companies. Other petitions were presented by shareholders or policyholders in companies which had been absorbed by the principal company, but were not in liquidation, the petitioners complaining that these companies were unnecessarily included in the bill, and might be brought into liquidation by the arbitrator, though they had no debts. Certain shareholders in the principal company also petitioned, objecting to the proposal in the bill that the arbitrator should be empowered, at his discretion, to reconstruct the company and to continue the business. It was urged by the promoters that, as to the amalgamated companies which were in liquidation, both shareholders and creditors were sufficiently represented by the official liquidators, who appeared by leave of the Court of Chancery, but only against clauses; and as to companies not in liquidation, that the petitioners were individual shareholders or policyholders not representing their respective companies. It was further objected that dissentient shareholders of the principal company were represented by the official liquidator; and as to all the petitioners, it was contended that if their *locus standi* were admitted, their opposition should be limited to clauses:

Held, that (excepting a new life assurance company, which petitioned against the bill under their common seal, and had been formed by members of the principal company in liquidation) all the petitioners had an unlimited *locus standi* against the bill.

The *locus standi* of John Albert Varrentrapp was objected to, because (1) the petitioner has no right to be heard separately from the rest of the policyholders in the Albert company, the official liquidator of that company being the proper person to represent all such policyholders; (2) the petitioner does not allege any ground, nor has he any interest which entitles him to be heard against the bill consistently with practice.

The *locus standi* of Charles Edward Lewis and Thomas Bradshaw was objected to, because (1) the petitioners have no right to be heard as individual shareholders in the St. George assurance company and the London and Continental assurance company respectively, apart from the general body of such shareholders; (2) the petitioners are not the proper representatives of the said companies respectively; (3) they are not entitled to appear according to practice.

The *locus standi* of Edward Grattan Holt and Samuel Holt, was objected to, because (1) the petitioners have no right to be heard as individual policyholders or constituents of the Metropolitan Counties life assurance company, and the Family Endowment life assurance company respectively, apart from the general body of such policyholders or constituents; (2) the petitioners are not the proper representatives of such companies, who appear by the respective official liquidators appointed by the Court of Chancery.

The *locus standi* of Lewis Pocock, and of William Owen and others was objected to, substantially on the same grounds.

The *locus standi* of the New Albert Life Assurance company (limited) and others, was objected to, because (1) the company are not mentioned in the bill, or in any way affected by any of its clauses and provisions; (2) the other petitioners have no right to be heard as individual policyholders in the various companies, of which they are respectively constituents, or in which they hold policies apart from the general body of such constituents or policyholders; (3) the last mentioned petitioners are not the proper representatives of the companies respectively.

At this hearing, the New Albert life assurance company (limited), appeared by its agents; as did all the other petitioners, Lattey excepted.

Pember (for Lewis Pocock): The petitioner entered into a contract with the Family Endowment society (which was absorbed by the Albert company in 1861) for the payment to him of £1000 for every child of himself and his wife who should attain the age of 18 years: and Mr. Pocock paid the whole of the consideration money to the Family Endowment society. His position, therefore, differs from that of ordinary policyholders, because, his payment having been completed, he has no continuing liability, and no interest, therefore, on that ground in the recon-

struction of the Albert company. The Albert company indemnified the Family Endowment society against all claims; but the arrangement was made without the consent or knowledge of the petitioner. The Family Endowment society is now in process of liquidation, and the Court of Chancery has decided that in cases where the whole consideration has been paid to the society, annuitants, and other persons whose position resembles that of the petitioner, are entitled to the whole sum due to them under their respective contracts. The Family Endowment society is solvent; and, but for this bill, the Court of Chancery would make a common call-order, as a matter of course, and the petitioner would get his £1000, or series of such sums, in full. The arbitrator is to value the claims made by creditors. My client's claim is now worth 20s. in the £1; and the arbitrator can only deal with it by making it something worse than it is at present. The Court of Chancery has done, or can do, for Mr. Pocock all that he wants; and by withdrawing the case from the consideration of that tribunal, he will be deprived of remedies to which, after considerable expense and trouble, he and others have satisfied the Court they are justly entitled. The effect of the bill may be to release from a portion of their liability certain persons on whom the petitioner can enforce a claim for the whole amount due to him. He did not oppose the bill in the House of Lords, as he believed he was represented there by the official liquidator of the Family Endowment society, who opposed the bill by order of the Court of Chancery; but the official liquidator represents the shareholders of the society, rather than the creditors, whose interests, in many respects, directly conflict. At a meeting of the annuitants and endowment contract holders, Mr. Pocock was unanimously requested to oppose the bill on their behalf. He is, therefore, a representative petitioner, and asks to be heard against the transfer of his cause from a competent tribunal, which will give him all he wants, to a new tribunal, in which his claim may be less completely recognised.

Webster: You will be heard before the arbitrator.

Pember: You say that the official liquidator represents us here; why should you not say that he also represents us before the arbitrator? If you admit that we should be heard before the arbitrator, why object to our *locus standi* here? You admit that the official liquidator is not a fit person to represent us in arbitration; and, if so, he is equally unfit to represent us in Parliament. As to the theory of representation, there is no analogy between this case and the case of rate-payers who are represented by the local authority, or of shareholders, who are represented by their directors. An official liquidator can only do what he is told to do by the Court of Chancery; of himself he neither defines the rights of parties, nor protects them. It is true he represents the company, but he does not necessarily represent creditors as well as shareholders. We are not his constituents. The shareholders are his constituents, and they are our debtors. It would be a monstrous thing to hold that the debtor could represent the creditor. The official

liquidator will appear before the arbitrator, his object necessarily being to make the assets of the company go as far as he can; and if the arbitrator says that in his opinion certain claims should be lowered 25 per cent., the official liquidator will only be too glad. Again, if any question arises as to our claim against the company, the official liquidator will represent the company's view before the arbitrator; but he will not represent us. On the contrary, he will have to fight us. Why, then, should he represent us here? Moreover, in this case, the order of the Court of Chancery only authorises the official liquidator to spend £200 in opposing the bill in this house, and he does not oppose the preamble; he only opposes on clauses. How, then, can he represent us, our petition being directed against the preamble?

Hume Williams (for E. G. Holt and S. Holt): In 1860 Mr. E. G. Holt assured for £2,000, in the Metropolitan Counties assurance company, the life of a gentleman named in a lease of lands, and has since paid the annual premiums, amounting to about £600. In the same year Mr. S. Holt effected an assurance for the sum of £1,500 in the Family Endowment society; and both these companies have been amalgamated with the Albert. There is no precedent in law, in equity, or in Parliament, to show that a creditor is disentitled to be heard where his rights are invaded. Here the object of the bill is to confer on the promoters extraordinary and exceptional powers, to take away authority from the Court of Chancery for the administration of assets, and to adjust conflicting claims by means of a new authority. In Chancery we might appeal from any order made by the liquidators; but under the bill the arbitrator's award will be final. We ask to be heard in opposition to such a transfer of jurisdiction, and on such a point the official liquidator cannot properly represent us before the Committee.

C. E. Lewis, solicitor (for W. Owen and others, and for C. E. Lewis and T. Bradshaw): Mr. Owen and two of his co-petitioners are executors, whose claim, in respect of a death, against the Manchester and London assurance company (absorbed by the Albert, and now in liquidation) has been allowed by the Court of Chancery on appeal. The rest of the petitioners are annuitants in other companies, also absorbed by the Albert. Under section 14, Mr. Owen may lose the value of the decree made by the Court of Chancery in his favour, for the arbitrator is not bound by it and may disregard it. As to the annuitants, the Court of Chancery has held that where company A has contracted to give an annuity in consideration of a certain sum paid down once for all, and that company is subsequently absorbed by company B, the annuitant has not acquiesced in the transfer, but is entitled to look to company A. We complain, then, that our status will be altered. The promoters propose to arrest the course of justice and take from us the remedy we have obtained, and the certainty we now have of being paid in full, by empowering the arbitrator to make deductions from claims. In the House of Lords the official liquidator appeared, but the promoters said, "What right have you to be here? Where are

your policyholders? Where are your annuitants? They can take care of themselves." Now that they answer this challenge, they are met with the objection that they are represented by the official liquidator, a hybrid sort of person, who merely collects assets, ascertains liabilities, and distributes them *pro rata* as far as they will go. There is not a word in the Joint Stock Companies' Acts to justify the theory that the official liquidator represents the creditors. He represents the corporate body which is defunct, and before the Committee he cannot do justice both to shareholders, who must pay, and to creditors who have to receive. The interests are conflicting, and the Court of Chancery recognises this fact by frequently appointing a creditor's representative to act with the official liquidator in order to see that justice is done. The principle of representation does not apply here. Creditors are not a corporate body, but stand upon their individual rights, and there has been no meeting to choose a representative. Messrs. Lewis and Bradshaw are shareholders in the St. George's assurance and London and Continental assurance companies, which are not in liquidation at all, and owe nothing, but are to be dragged into liquidation to enable the promoters to rid themselves of their liability. These companies can now only be wound up under the Companies' Act, 1862, upon the application of some unsatisfied creditor or shareholder. But there are no such persons; to include these two companies, therefore, in the operation of the bill, will inflict great injury and expense on the petitioners and other shareholders without any corresponding benefit whatever. The bill empowers the arbitrator to direct the winding-up of any of the scheduled or absorbed companies not in liquidation, or to deal with them as if they were in liquidation, and he may require from the shareholders such contributions as he thinks equitable. Thus, though the Court of Chancery could make no order against us, the bill will render us liable to contributions for the purpose of enabling other companies to get over their difficulties.

Beddall, Parliamentary agent (for J. A. Varrontrapp): The petitioner represents the German policyholders in the Albert company, and the other associations absorbed by it, and his objections go chiefly to the proposal for reconstruction. The bill empowers the arbitrator to reconstruct the company in such a way as to compel a continuation of the payment of premiums on policies. The German policyholders feel that they have trusted a company, which has grossly deceived them, and they have determined not to pay a single additional premium, even if they thereby forfeit all interest in their policies. We, therefore, ask for clauses which will enable us to save something out of the wreck, and which will give to a dissentient policyholder the value of his interest, whatever the arbitrator may determine it to be. As to the objection that we are represented by the official liquidator, it is obvious that he merely represents the company under the sanction and control of the Court of Chancery. In the same way it might be said, upon any question affecting copyright, that they are represented by the Lord of the Manor. It is true that in our

case the policies have not fallen in, but we have a right to a certain sum of money, and as under the bill that right may be confiscated, we are entitled to appear against it.

Plews, solicitor (for the New Albert Life assurance company (limited) and others): The petition is under the seal of the new company, and is also signed by 38 persons holding policies in some of the companies amalgamated with the Albert. We represent the interests of 608 other policyholders who have formed themselves into a new company for the purpose of protecting their interests as a body; and as some of the petitioners are policyholders in companies not in liquidation, we cannot be represented by any official liquidator, nor can we be represented otherwise than individually. We are opposed to the power which the bill confers on the arbitrator to reconstruct the company for the purpose of carrying on the business "to its natural termination." We object to be tied to a cripple, such as any reconstructed company must necessarily be. In the event of such a reconstruction we should have little chance of receiving back what we have paid in, and we should therefore decline to continue our payments. We were allowed to appear by special order before the Court of Chancery; and in the House of Lords no objection was raised to our *locus standi*. Even if the new company is excluded, the individual petitioners have a right to appear.

Webster, Q.C. (for promoters): The company now petitioning is a new insurance company, which has obtained as members a certain number of policyholders in the old institution. Such a company has no *locus standi* whatever, not being mentioned in the bill. As to the other petitioners, if they have any *locus standi* at all, it can only be upon clauses. The whole scope of the bill is to enable the arbitrator to do the best that can be done for a company, which, at the time of its stoppage, had policies to the extent of more than £8,000,000, with premiums amounting to £325,000 a-year, which was liable to annuitants to the extent of some £15,000 a-year, besides other claims in the shape of family endowment, and which had 25,000 policyholders. The schedule to the bill deals with twenty companies absorbed in the Albert company, and we say that these companies are properly and fully represented by the official liquidators, who may call any witnesses they please, and raise before the Committee all the questions raised in the petitions. The promoters are a committee appointed unanimously at meetings of hundreds of shareholders, who have voted by a majority of more than ten to one in favour of this scheme, and Lord Justice James has said that an Act of Parliament is the only way of extricating the parties from their difficulties. Mr. Varrentrapp may reasonably ask to appear before the arbitrator, and to have the value of his present interest determined, if he does not choose to continue in the company. But that is a point of detail which hardly gives him a *locus standi* here, and at the utmost it is only a question of a clause. Though we contend that the official liquidator is the proper person to represent the companies here, it does not follow that he will properly represent the petitioners before the arbitrator. This is a bill

brought in to accomplish a great public purpose, the emergency being so great that special legislation is necessary. The official liquidators are the persons to state to the Committee what are the objections to the bill, either upon preamble or upon clauses; but we have never said that they will represent individual interests before the arbitrator. When we were asked for a clause securing the rights of annuitants, we objected to it, not because we questioned "the right of the annuitants to be paid in full, but solely on the ground that it would be inconsistent with the whole scope of the measure for Parliament to define the rights of any class," everything being left under the bill to the decision of the arbitrator. On the subject of representation, the analogy of shareholders in public companies, who are bound by the common seal, holds completely. The annuitants and policyholders are persons who, as far as this bill is concerned, are represented by the official liquidators, who are now the company. They have no distinct interest, entitling them to be heard on clauses, and certainly not on preamble. Looking at the enormous and complicated interests involved here, the individual interests of the petitioning annuitants and policyholders are so infinitesimal that their case is no more than that of an individual ratepayer or shareholder who, according to the practice of this Court, cannot be heard. The Referees have even decided that an individual creditor cannot appear to oppose financial arrangements promoted for the general good of the concern.

Mr. RICKARDS: That is where the creditor has a legal remedy.

Webster: No doubt; but the whole scope of this bill is to alter the legal position of parties. The Court of Chancery says it is impossible that we can adjust these rights, and that this can only be done by an arbitrator armed with full powers from the Legislature.

The CHAIRMAN: You seek to alter the rights of the creditor?

Webster: No; the arbitrator may alter them.

The CHAIRMAN: Then you propose to give him power to alter them?

Webster: Yes; but creditors may be heard before the arbitrator against the scheme of arrangement. Are individual creditors entitled to be heard against the principle of a scheme approved by the other House of Parliament, and declared by the Court of Chancery to be essential to the administration of justice? As to companies which are in liquidation, the policyholders and annuitants are represented by the official liquidators; and as to companies not in liquidation, no one can tell what claims may arise against them, and the arbitrator must have them before him in case of any complications. Mr. Lewis and Mr. Bradshaw are only individual shareholders. If the shareholders had thought it worth while to object to the bill, they might have met together and passed a formal resolution. But neither petitioner has shown that any other shareholder concurs with him, and they represent no one.

The CHAIRMAN: Were the policyholders heard in the House of Lords apart from the liquidators?

Plews: Yes; the question of their *locus standi* was never raised.

Webster: And the official liquidators appeared in the other House, and were called as witnesses. This being a scheme for arrangement, and against liquidation, they were not favourable witnesses for the bill, and could say anything they wished against it. They are in the same position now, and can urge all the objections entertained by creditors or shareholders against the bill; but the vice-chancellor has said that their opposition ought to be limited to clauses, and that, the matter having been so fully discussed, more money ought not to be spent in opposing the principle of the bill, namely, that some special tribunal should be established to deal with this case. By means of the official liquidator those who seek to oppose the bill have the means of bringing their cases in the fullest manner before the Committee, the liquidator being for this purpose the representative of the company, and being sent here by the Court of Chancery to give information to the Committee upon these very questions.

Hume Williams: The liquidators cannot appear against the preamble.

Webster: Of course not, but every one of the petitions raises at most the question of clauses.

Mr. RICKARDS: What power will this bill give to the arbitrator over a company like the St. George's company, which, we are told, is not in liquidation, and has no creditors?

Webster: I apprehend the bill gives him no power at all unless some creditors start up. The company are included in the bill because they are among the companies that have been absorbed, and it is impossible to tell what may be the position of this or any other such company in relation to others. For instance, suppose it turned out that some payments had been made by the St. George's which were illegal, or that the amalgamation was *ultra vires*.

Mr. RICKARDS: The arbitrator would be empowered to go into and unravel all transactions which had taken place between any of these companies *inter se*?

Webster: Yes; there is no conflict of interests here between shareholders and creditors. The official liquidator stands between them, examining the claims of the one and enforcing calls from the other. This is not, as has been represented, a shareholders' measure; it is a measure for the benefit of all parties with a view to avoid an endless sea of litigation. The case is one without precedent, the object of the bill being to substitute some other tribunal for the Court of Chancery, which is confessedly inadequate to deal with the complicated interests here involved. The only opponents of the bill are individual annuitants, policyholders, and shareholders, who, as a class, are adequately represented by the official liquidator, and who, if entitled to appear at all, should be heard against clauses and not against the preamble.

Mr. RICKARDS: The bill imposes no restriction upon the arbitrator?

Webster: No.

Mr. RICKARDS: Therefore, to impose any would be inconsistent with the principle of the bill?

Webster: The petitioners do not raise any

question as to the principle of the bill; and the emergency is so great that it can only be met by placing the most plenary powers in the hands of the arbitrators.

The CHAIRMAN (after deliberation): The *locus standi* of John Albert Varrentrapp, of Charles E. Lewis and T. Bradshaw, of Edward Grattan Holt and Samuel Holt, of Lewis Pocock, and of William Owen, and others, is *Allowed*. With respect to the case of the New Albert Life Assurance company and others, the *locus standi* is *Allowed* of such of the petitioners as are policyholders.

Agents for Bill, *Wyatt & Hoskins*.

Agent for J. A. Varrentrapp, *A. Beddall*.

Agents for C. E. Lewis and T. Bradshaw, *Lewis & Co.*

Agent for E. G. & S. Holt, *W. Bell*.

Agent for Lewis Pocock, *H. Toogood*.

Agents for New Albert Life Assurance Company (Limited), and others, *Laurance, Plews & Co.*

Agents for William Owen and others, *Lewis & Co.*

NORTH EASTERN METROPOLITAN TRAMWAYS BILL.

1st May, 1871.—(Before *Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of the NORTH LONDON RAILWAY COMPANY.

Tramways—Railway Company—Competition—Interference with Roads and Bridges—Extent of—May Outweigh Advantages of Tramway—How Far this Question Admissible—Under Limited Locus.

Upon a petition by a railway company against a bill authorising the construction of tramways across bridges, which, together with the roadways and approaches, the petitioners were bound by statute to maintain, the Court, affirming previous decisions, gave a *locus standi* against such provisions of the bill as might interfere with the bridges or works of the petitioners:

(*Per. Cur.*) A *locus standi* so limited is not confined to clauses, but extends to the preamble, against which the petitioners may be heard to show that the proposed interference with

their bridges will outweigh the public advantages of the tramway.

This was a tramway bill; and the petitioners alleged competition, and that certain of the proposed tramways would be laid along roads which were carried over the North London railway by bridges constructed by petitioners, they being also bound by statute to maintain and keep in repair those roads and bridges.

The *locus standi* of the petitioners was objected to, because (1) no lands, stations, &c., of theirs are taken, used, or interfered with; (2) they are not entitled to be heard on the ground of competition; (3) the proposed tramways will not interfere with the bridges of the petitioners; and the roads carried over their railway by means of those bridges are vested in and under the control and management of the vestry of St. Mary, Islington, and the Board of Works for the Hackney district respectively, who petition against the bill, and are the only parties (if any) entitled to be heard on the ground of interference with such roads and bridges; (4) petitioners are not entitled to be heard as to any alleged effect which the construction of the proposed tramways will have upon the traffic of particular streets or roads; (5) or to a hearing according to practice.

Johnson, Q.C. (for petitioners): As to the competition set up I cannot insist upon it, in the face of contrary decisions by the Court upon petitions by railway companies against tramways; but we are bound to repair the bridges and approaches, and in that respect are within the decision in the *North London Tramways*, 1870, Bill, (2 Cliff. & Steph. 84.)

The CHAIRMAN: So in the case of the *Vale of Clyde Tramways Bill* (p. 141), the *locus standi* of the petitioning railway company was allowed "against such provisions of the bill as may authorise an interference with any bridges or works of the petitioners." A *locus standi* will be allowed here in similar terms.

Pember (for promoters): The petitioners will not be allowed to oppose our preamble?

The CHAIRMAN: As far as the preamble may refer to this particular point; the petitioners cannot be heard on any other point.

Johnson: If it can be shown that the tramway cannot be constructed without injuring our bridges or works, we shall then be allowed to urge the rejection of the bill.

Pember: In that case the petitioners may raise the question whether the public convenience to be afforded by the tramway outweighs the inconvenience which will be caused to them; and the whole question of whether the tramway is expedient under the circumstances may be opened.

The CHAIRMAN: Against the preamble the petitioners will be limited to the objection I have indicated.

Mr. RICKARDS: It is open to the petitioners to oppose the preamble by showing that the interference with their bridges will be so hurtful to them as to outweigh the public expediency of making the tramway; but the petitioners

must not oppose the preamble on any other grounds.

Locus standi, thus limited, *Allowed*.

Agent for Bill, *H. Toogood*.

Agents for Petitioners, *Paine & Layton*.

COMMERCIAL ROAD EAST (TRAMWAYS) BILL.

5th May, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.)

Petition of (1) GREAT EASTERN RAILWAY COMPANY.

Practice—*Specific allegation*—*General objection*—*Insufficiency of—Railway—S. O. 135*—(Petitions against Tramway Bills)—*Frontagers*—*"Lands" and "Premises"*—*Meanings attached to.*

A railway company petitioning as frontagers against a tramway bill, alleged that they were the owners of "lands and houses," along the line of the proposed tramway. The notice of objections did not specifically traverse this allegation; but in argument it was stated that the petitioners' houses on this road had been pulled down, and that their only property there was in land—i.e., the vacant sites. Counsel replied that the promoters were bound by their notice of objections, and, not having there disputed an allegation which brought the petitioners as frontagers within S. O. 135, could not now deny the truth of the allegation:

Held, without enquiry or argument as to merits, that the *locus standi* of the petitioners must be *Allowed*.

(*Qu.*) Whether the ownership or occupation of "lands" alone, apart from a "house, shop, or warehouse," entitles a petitioner to be heard under S. O. 135 against a tramway bill.

The Great Eastern railway company petitioned against this bill, which was one for the construction of tramways, alleging themselves to be the owners of property in lands and houses on each side of Commercial Street, along which the proposed tramways would be laid, and they objected to such tramways as well upon public grounds as on account of the resulting injury to petitioners' property, by deterioration.

The *locus standi* of the petitioners was objected to, because (1) the tramways proposed will not in any way compete or interfere with the railways of the petitioners; (2) no land or pro-

of theirs will be taken or used; they are not the municipal or other authority having the local management of the district injuriously affected by the bill; clause 18, being similar to the clause in "the Tramways Act, 1870," at the instance of railway companies, fully protects when a tramway is carried over a railway; (5) petitioners have no interest entitling them to be heard according to practice.

Order (for petitioners): We are frontagers on the road along which the tramway will be running certain houses and lands on each side of the road. We have, therefore, a right, to be heard under S. O. 135.

Order (for promoters): I am told that the petitioners have been taken down.

Order: We allege a ground of *locus standi* brings us within S. O. 135. In your notice of objections you do not dispute that allegation. We are therefore bound by your objections, and not spring upon me a question as to the truth or untruth of which you have given me notice.

CHAIRMAN: The S. O. refers to "premises." Are not lands "premises" within the meaning of the Act?

RICKARDS: The allegation in the petition does not seem to be met by the notice of objection.

Objection 5, which is a general one, over it.

Order: That is too general. There should have been a specific objection that our allegations as to lands and houses along the roadway are untrue.

locus standi Allowed.

Order for Petitioners, *Sherwood & Co.*

MEMBERS OF (2) TRUSTEES OF ST. MARY'S PARISH, ST. MARY'S CHAPEL; (3) LIMEHOUSE DISTRICT BOARD OF WORKS; (4) METROPOLITAN BOARD OF WORKS.

Case—Interference with Market—Duplicate authority over—Trustees of Parish—Road works—*Omnia rite acta*—Impending Termination of Trust—District Board—Reversionary interest in road—Metropolitan Board of Works assent of, to Provisional Orders—Opposition of, to Tramway Bills—Distinction Between Turnpike Road—Metropolis Local Management Act—General Tramway Act—Railway Company.

When parochial trustees exercised a statutory control over a metropolitan market, applying the surplus tolls in reduction of rates. The market was held in the High Street, and a local Act empowered the trustees to direct that the hay and straw carts should and in adjoining streets when works of im-

provement were in progress in the High Street, and their surveyor was authorised to give a similar order when the passage of the High Street was impeded by these carts. A bill was promoted for the construction of a tramway across the High Street and through one of the adjoining streets, over which the trustees claimed this easement. It was objected that their petition did not show that the surveyor had made an order under the terms of the Act, and therefore that, so far as appeared from the petition, the hay and straw carts stood in the adjacent streets on sufferance only:

Held, that as the authority given by the Act had been exercised, it must be presumed to have been rightly and duly exercised, and the *locus standi* of the petitioners was Allowed.

The chief road along which the tramway passed was a turnpike road, and the trustees had petitioned against the bill, without objection. The trust, however, would expire three months before the tramway could be constructed, and the road would then vest in the district board, who urged that, as reversioners, they were entitled to a *locus standi*, and also alleged a right to appear as the local authority under S. O. 134. It was objected that a prospective interest like theirs could not confer a *locus standi*, and that the only persons who could be heard were the trustees in whom the road was now actually vested. In the course of argument, it was stated that the trustees did not intend to prosecute their petition:

Held, that the district board were entitled to a *locus standi*.

A petition being presented by the Metropolitan Board of Works against the same bill, the promoters, on the authority of Section 244 of the Metropolis Local Management Act, sought to limit the *locus standi* of the petitioners to such parts of the tramway as did not traverse the turnpike road. This limitation was resisted on the ground (1) of the general superintending authority given to the board over the streets and roads, and over the traffic of the metropolis; and (2) of the recognition in the General Tramway Act, 1870, of the right of the board to veto the construction of any metropolitan tramway under a Provisional Order:

Held, that the petitioners were entitled to a *locus standi* without limitation. The Court,

their bridges will outweigh the public advantages of the tramway.

This was a tramway bill; and the petitioners alleged competition, and that certain of the proposed tramways would be laid along roads which were carried over the North London railway by bridges constructed by petitioners, they being also bound by statute to maintain and keep in repair those roads and bridges.

The *locus standi* of the petitioners was objected to, because (1) no lands, stations, &c., of theirs are taken, used, or interfered with; (2) they are not entitled to be heard on the ground of competition; (3) the proposed tramways will not interfere with the bridges of the petitioners; and the roads carried over their railway by means of those bridges are vested in and under the control and management of the vestry of St. Mary, Islington, and the Board of Works for the Hackney district respectively, who petition against the bill, and are the only parties (if any) entitled to be heard on the ground of interference with such roads and bridges; (4) petitioners are not entitled to be heard as to any alleged effect which the construction of the proposed tramways will have upon the traffic of particular streets or roads; (5) or to a hearing according to practice.

Johnson, Q.C. (for petitioners): As to the competition set up I cannot insist upon it, in the face of contrary decisions by the Court upon petitions by railway companies against tramways; but we are bound to repair the bridges and approaches, and in that respect are within the decision in the *North London Tramways*, 1870, *Bill*, (2 *Cliff. & Steph.* 84.)

The CHAIRMAN: So in the case of the *Vale of Clyde Tramways Bill* (p. 141), the *locus standi* of the petitioning railway company was allowed "against such provisions of the bill as may authorise an interference with any bridges or works of the petitioners." A *locus standi* will be allowed here in similar terms.

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The CHAIRMAN: As far as the preamble may refer to this particular point; the petitioners cannot be heard on any other point.

Johnson: If it can be shown that the tramway cannot be constructed without injuring our bridges or works, we shall then be allowed to urge the rejection of the bill.

Pember: In that case the petitioners may raise the question whether the public convenience to be afforded by the tramway outweighs the inconvenience which will be caused to them; and the whole question of whether the tramway is expedient under the circumstances may be opened.

The CHAIRMAN: Against the preamble the petitioners will be limited to the objection I have indicated.

Mr. RICKARDS: It is open to the petitioners to oppose the preamble by showing that the interference with their bridges will be so hurtful to them as to outweigh the public expediency of making the tramway; but the petitioners

must not oppose the preamble on any other grounds.

Locus standi, thus limited, Allowed.

Agent for Bill, *H. Toogood*.

Agents for Petitioners, *Paine & Layton*.

COMMERCIAL ROAD EAST (TRAMWAYS) BILL.

5th May, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.)

Petition of (1) GREAT EASTERN RAILWAY COMPANY.

Practice—*Specific allegation*—*General objection*—*Insufficiency of—Railway—S. O. 135—(Petitions against Tramway Bills)—Frontagers—“Lands” and “Premises”—Meanings attached to.*

A railway company petitioning as frontagers against a tramway bill, alleged that they were the owners of "lands and houses," along the line of the proposed tramway. The notice of objections did not specifically traverse this allegation; but in argument it was stated that the petitioners' houses on this road had been pulled down, and that their only property there was in land—i.e., the vacant sites. Counsel replied that the promoters were bound by their notice of objections, and, not having there disputed an allegation which brought the petitioners as frontagers within S. O. 135, could not now deny the truth of the allegation:

Held, without enquiry or argument as to merits, that the *locus standi* of the petitioners must be Allowed.

(*Qu.*) Whether the ownership or occupation of "lands" alone, apart from a "house, shop, or warehouse," entitles a petitioner to be heard under S. O. 135 against a tramway bill.

The Great Eastern railway company petitioned against this bill, which was one for the construction of tramways, alleging themselves to be the owners of property in lands and houses on each side of Commercial Street, along which the proposed tramways would be laid, and they objected to such tramways as well upon public grounds as on account of the resulting injury to petitioners' property, by deterioration.

The *locus standi* of the petitioners was objected to, because (1) the tramways proposed will not in any way compete or interfere with the railways of the petitioners; (2) no land or pro-

perty of theirs will be taken or used; (3) they are not the municipal or other authority having the local management of any district injuriously affected by the bill; (4) Clause 18, being similar to the clause inserted in "the Tramways Act, 1870," at the instance of railway companies, fully protects them when a tramway is carried over a railway bridge; (5) petitioners have no interest entitling them to be heard according to practice.

Bidder (for petitioners): We are frontagers on the road along which the tramway will be laid, owning certain houses and lands on each side of the road. We have, therefore, a right, to be heard under S. O. 135.

Shiress Will (for promoters): I am told that the houses have been taken down.

Bidder: We allege a ground of *locus standi* which brings us within S. O. 135. In your notice of objections you do not dispute that allegation. You are therefore bound by your objections, and must not spring upon me a question as to the truth or untruth of which you have given me no notice.

The CHAIRMAN: The S. O. refers to "premises." Are not lands "premises" within the S. O.?

Mr. RICKARDS: The allegation in the petition does not seem to be met by the notice of objection.

Will: Objection 5, which is a general one, may cover it.

Bidder: That is too general. There should have been a specific objection that our allegation as to lands and houses along the roadway was untrue.

Locus standi Allowed.

Agents for Petitioners, Sherwood & Co.

Petitions of (2) TRUSTEES OF ST. MARY'S PARISH, WHITECHAPEL; (3) LIMEHOUSE DISTRICT BOARD OF WORKS; (4) METROPOLITAN BOARD OF WORKS.

Tramway—Interference with Market—Duplicate Authority over—Trustees of Parish—Road Trustees—Omnia rite acta—Impending Termination of Trust—District Board—Reversionary Interest in road—Metropolitan Board of Works—Assent of, to Provisional Orders—Opposition of, to Tramway Bills—Distinction Between—Turnpike Road—Metropolis Local Management Act—General Tramway Act—Railway Company.

Certain parochial trustees exercised a statutory control over a metropolitan market, applying the surplus tolls in reduction of rates. The market was held in the High Street, but a local Act empowered the trustees to direct that the hay and straw carts should stand in adjoining streets when works of im-

provement were in progress in the High Street, and their surveyor was authorised to give a similar order when the passage of the High Street was impeded by these carts. A bill was promoted for the construction of a tramway across the High Street and through one of the adjoining streets, over which the trustees claimed this easement. It was objected that their petition did not show that the surveyor had made an order under the terms of the Act, and therefore that, so far as appeared from the petition, the hay and straw carts stood in the adjacent streets on sufferance only:

Held, that as the authority given by the Act had been exercised, it must be presumed to have been rightly and duly exercised, and the *locus standi* of the petitioners was *Allowed*.

The chief road along which the tramway passed was a turnpike road, and the trustees had petitioned against the bill, without objection. The trust, however, would expire three months before the tramway could be constructed, and the road would then vest in the district board, who urged that, as rever-sioners, they were entitled to a *locus standi*, and also alleged a right to appear as the local authority under S. O. 134. It was objected that a prospective interest like theirs could not confer a *locus standi*, and that the only persons who could be heard were the trustees in whom the road was now actually vested. In the course of argument, it was stated that the trustees did not intend to prosecute their petition:

Held, that the district board were entitled to a *locus standi*.

A petition being presented by the Metropolitan Board of Works against the same bill, the promoters, on the authority of Section 244 of the Metropolis Local Management Act, sought to limit the *locus standi* of the petitioners to such parts of the tramway as did not traverse the turnpike road. This limitation was resisted on the ground (1) of the general superintending authority given to the board over the streets and roads, and over the traffic of the metropolis; and (2) of the recognition in the General Tramway Act, 1870, of the right of the board to veto the construction of any metropolitan tramway under a Provisional Order:

Held, that the petitioners were entitled to a *locus standi* without limitation. The Court,

Act, we are the proper authority to superintend the construction of metropolitan tramways; and it is too much to contend that when a special Act is applied for, we are not to appear. Suppose two tramways join each other, one being made under a Provisional Order and the other under a special Act. As to the first, the Metropolitan board, by the general law, have the power of prescribing all that is to be done with reference to the tramway (for, if what they prescribe is not done, they withhold their assent); whilst in the case of the adjoining tramway, they are not even to be heard before a Committee, though something may be proposed which is contrary to the regulations they have laid down for tramway traffic.

Mr. RICKARDS: Tramways were made under Acts of Parliament before they were made by virtue of Provisional Orders.

Cripps: And upon all those tramway bills the Metropolitan board of works were heard.

Mr. RICKARDS: If it be the fact that the metropolitan board have been heard, in all cases, against metropolitan tramways, that is enough?

Shrubsole: I have been agent for the board ever since tramways were first introduced; and on every occasion they have appeared before the Committee.

Will: In those cases the tramway was not proposed to be laid on a turnpike road.

The CHAIRMAN: The general Act provides that the Board of Trade shall exercise the unusual power of authorising tramways where there is no opposition on the part of local authorities; but that provision does not necessarily give those local authorities a *locus standi* against a bill. Before the Railways Facilities Act, 1864, was amended last year, the Board of Trade had power to issue a Provisional Order for making a railway, where every landowner consented and no other railway objected; any railway company could veto the action of the Board of Trade with regard to a Provisional Order; but it did not follow that the railway company would have a *locus standi* against a bill brought in for the same purpose.

Cripps: The Board of Trade had no power where a landowner objected. Is not that a recognition of the right of a landowner to a *locus standi* on the matter before the Committee on the bill?

Mr. RICKARDS: But any railway company had the power of ousting the Board of Trade of its jurisdiction. So in this case Parliament gave to the Board of Trade, plus the Metropolitan board, the power to authorise a tramway. *Non sequitur* that such a provision gives the Metropolitan board a *locus standi* before a Committee to oppose any tramway scheme?

Cripps: The authority which can stop a tramway in the case of a Provisional Order, surely is entitled to go before the Committee, and show reasons why the tramway ought not to be made.

Mr. RICKARDS: It is a fair argument to use, but not a conclusive one.

Cripps: Before the General Act of last year the Referees might, under S. O. 134, admit the Metropolitan board of works as the local authority of the district, having the general management of the metropolis and its traffic.

Mr. RICKARDS: The argument against you is

that, as another body has jurisdiction over the road, the Metropolitan board is not concerned in the bill, and has no right to intervene.

Cripps: Assuming even that the turnpike trustees have jurisdiction over the whole of the road proposed to be interfered with, that does not oust the Metropolitan board of works. Both parties may oppose on different grounds. The road authority sees that nothing is done to injure roads which they have to make and maintain; but above them there is the general superintending authority exercised by the Metropolitan board, who must see that while what is proposed may not be a bad thing for the parish or for the road, it does not interfere with the general traffic of the metropolis. That consideration must have been present in the mind of Parliament when it passed the General Act which says, as to Provisional Orders, that you must obtain the consent not only of the road authority but of the Metropolitan board. Here, as we have heard, the jurisdiction of the road authority expires next August, and before the tramway is constructed they will cease to have any interest in the road at all. What is a turnpike trust? The trustees have power to collect tolls for the purpose of paying off the debt upon the road, but as soon as the debt is paid off their authority is gone.

The CHAIRMAN: What is the relation between the Limehouse district board and the Metropolitan board of works?

Newall: We have the entire control of the roads; we have the internal management of the district; and as regards the roads, the Metropolitan board of works have no right to interfere.

Cripps: We could prevent you from stopping up any road; and we have authority as to the line of street, and jurisdiction over the whole district in relation to the general traffic of the metropolis. The turnpike trust is only interested in taking care of the bondholders, and as soon as those bondholders are paid off the trust comes to an end. But, further, the road trustees here have jurisdiction over only a part of the highway upon which this tramway is to be laid. The tramway passes over a road (Commercial Street) made by the Metropolitan board under statutory powers in 1865, long after this trust was established.

Shiress Will (in reply): As to the Metropolitan board, the great bulk of the road along which the tramway will pass is vested in trustees.

Mr. RICKARDS: It does not matter about the great bulk of the road. If the tramway will pass along other roads besides the turnpike, Mr. Cripps's clients will be entitled to a *locus standi*.

Will: In that case I shall ask that the *locus standi* of the Metropolitan board be limited to roads other than the turnpike. Section 214 of the Metropolis Local Management Act specially excepts the carriage way of these turnpikes from the jurisdiction of the board. The trustees have petitioned as the persons having charge of the road, and their *locus standi* is not objected to; but if you let in the Limehouse local board, and the Metropolitan board, in respect of the same road, you will have three sets of persons before the Committee whose claim to appear will rest on the same title. The

argument that the Limehouse district board must be let in because the turnpike trust terminates in August is not a valid one, and to recognize it would be contrary to practice. If I buy an estate through which a railway is to go, and my purchase is not to be completed till next year, my prospective interest does not entitle me to be heard; and here the persons who, for the time being, are the local authority, and in whom the road is now vested, can alone be heard. As to the petition of the Whitechapel trustees, there is a distinction between the present bill and that of last year. (2 Cliff. & Steph. 89.) Then a tramway was proposed running actually through the market, whereas ours will not traverse it.

Mitchell: It will run across the High Street, where the market is held.

Will: The market cannot be held upon the cross road, and therefore there can be no interference. As far as the petition discloses, the hay and straw carts only stand by sufferance in other streets than High Street, for it has not been shown that under section 46 of the Whitechapel Improvement Act the surveyor has made the requisite order that waggons and carts shall stand in other streets.

The CHAIRMAN: Are the trustees who petition the representatives of the parish, or only the market trustees?

Mitchell: They are the overseers of the parish, making and collecting rates, and the Act gives them power to control the market, receive tolls, and pay them in aid of the rates. They are not the road authority, but they have an easement over these roads.

Will: The only interest of the Whitechapel trustees set forth in the petition is the right to hold the market in High Street. They say "that occasionally, as is frequently the case, the market has to be held not only in High Street, but also in portions of Commercial Street." That allegation does not assert a right; and, so far as appears upon the petition, the trustees hold the market in Commercial Street merely by sufferance.

The CHAIRMAN: They allege that the market is, in point of fact, held there; and in your notice of objections you do not traverse the statement.

Will: We say "that the petitioners have no such interest in the streets and roads mentioned in their petition, apart from the general public, as entitles them to be heard." In the absence of any proof that the surveyor has authorised them, under the Act, to use adjoining places, we must assume they are using those places by sufferance only.

Mr. RICKARDS: An Act of Parliament is quoted which empowers the trustees to do certain things which, as they allege, have been done accordingly. Must not we presume that these things are done lawfully?

Will: You must presume that they have been done unlawfully, unless it can be shown that the terms of the statute have been complied with.

Mr. RICKARDS: The rule of law is, *omnia præsumuntur rite acta*.

Will: Yes; but you are entitled to ask for the authority by which the carts stand in these

streets; and the production of that authority is easy, supposing it to exist.

Mr. RICKARDS: May not the trustees say that if the tramway should have the effect of obstructing Commercial Street, they might thus be prevented from putting in force the section of the Act which empowers them at present, by taking certain steps, to extend the market into adjoining streets?

Will: That may be so; but for the purposes of *locus standi* the Court will avoid anticipations of something that is not likely to occur. The High Street affords plenty of accommodation for the market, and the tramway is not likely to diminish the available space so as to interfere with the market.

The CHAIRMAN (after deliberation): The *locus standi* of the trustees of St. Mary, Whitechapel; of the Metropolitan board of works; and of the Limehouse district board, is *Allowed*.

Agents for Bill, Wyatt & Hoskins.

Agent for Trustees of St. Mary's, Whitechapel, *Mitchell*.

Agent for Limehouse district board, *Newall*.

Agents for Metropolitan board of works, *Dyson & Co.*

LANCASHIRE AND YORKSHIRE RAILWAY (NEW WORKS) BILL.]

5th May, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.)

Petition of (1) CORPORATION OF MANCHESTER.

Railway—Municipal Corporations—Absorption of Public Streets—For New Station—Adjacent Boroughs—Improved Communications between—Interference with.

A bill promoted by a railway company to acquire portions of streets in the borough of Salford, for the purposes of a station, was opposed by the corporation of the adjacent borough of Manchester, on the ground of interference with Irwell Street, which must form a necessary part of any future plan for improving the communication between the two boroughs. Irwell Street lay in the borough of Salford, the corporation of which also petitioned, and were not objected to: *Held*, that the corporation of Manchester had no *locus standi*.

The bill was one to "confer further powers" on the Lancashire and Yorkshire railway company. Among other things, it proposed to take, for the purposes of the company, the site of the New

Bailey prison at Salford; to lay down rails on and across Irwell Street, connecting the site of the prison with the existing goods station, and to stop up a portion of Irwell Street, which, admittedly, was an important thoroughfare between Salford and Manchester.

The *locus standi* of the corporation of Manchester was objected to, because Irwell Street, the closing of which they opposed, was in the borough of Salford, and in no wise subject to the control of the corporation of Manchester, who accordingly had no interest in the bill, giving them a right to be heard.

Heron, Sir John (for the corporation of Manchester): Irwell Street, no doubt, is beyond our limits; but if absorbed in the manner proposed, the existing facilities for public traffic will be seriously diminished, and the difficulty of providing improved communication between Salford and Manchester will be increased.

Mr. RICKARDS: Have any steps been taken towards forming this new approach, or is it merely a project?

Heron: The matter has been before both corporations for some years, and this bill has induced them to take up the subject with more earnestness. Manchester is equally interested with Salford in obtaining a new approach. The Board of Trade report affirms that another communication can only be made by way of Irwell Street, and that, if it were seriously contemplated to make this approach, the powers sought by the bill ought not to be granted.

The *CHAIRMAN*: Have the corporations entered into any agreement under seal on the subject?

Heron: Resolutions, expressing their determination to go on with this improvement, have been passed by both corporations, and the Bridge-water trustees have declared their readiness to concur. There is no actual agreement.

Mr. RICKARDS: Nor plans?

Heron: I may say that plans have been prepared.

Pope, Q.C. (for promoters): The corporation of Salford, who are, undoubtedly, the street authority, petition, and are not objected to. Upon their petition, therefore, all the questions must be discussed which could legitimately be raised by the Manchester corporation. We are not interfering with one inch of Manchester property. The borough of Southwark might, with equal justice, petition against the Metropolitan railway going along the new street to the Mansion House, on the ground that this street forms an approach to the borough of Southwark.

Locus standi Disallowed.

Agents for Petitioners, *Sherwood & Co.*

Petition of (2) *OWNERS, &c., of COLLIERIES, &c., and OTHERS*; (3) *HUGH ELLIS and JOHN ELLIS.*

Railway—Stoppage of Street—Interference with Traffic—User of Street—Coalowners and Carriers—Manufacturing Premises—Injurious Affect.

ing—Deterioration in Value—Representation—Municipal Corporation.

A railway bill proposing (*inter alia*) to acquire and stop up a public thoroughfare was opposed, first, by coalowners, carriers, and others interested in the coal trade, who used this thoroughfare; secondly, by a manufacturing firm, from whose works goods of a certain class could only find an exit through the street which was to be stopped up, though the works themselves were not actually in that street:

Held, that both sets of petitioners were entitled to a *locus standi*, notwithstanding that the corporation, as the street authority, also petitioned, and were not objected to.

Semble: That the petitioners would also have succeeded in establishing their *locus standi*, had the bill been introduced by the corporation.

These petitioners, likewise, complained of the power sought to stop up Irwell Street. The first petition purported to be that of owners, lessees, and occupiers of collieries, coal-yards, coal-wharves, and other property used in the working, winning, and selling of coals in Salford and Manchester, and places near or adjacent thereto, or used or employed therein, or in conveying coal in, to, or through the same; and also of public and general carriers and owners, lessees, and occupiers of warehouses, wharves, carts, waggons, drays, lorries, and other vehicles used in the carrying, storing, and conveying of goods, wares, and merchandise, articles, matters, and things in, into, and through the borough and city and places near or adjacent thereto.

The other petitioners, *Messrs. Ellis*, were owners and occupiers of large works in close proximity to Irwell Street, which street afforded, as they alleged, the only means of exit for the large girders and other articles manufactured by them as engineers and millwrights.

The *locus standi* of the owners, &c., of collieries, &c., was objected to, because (1 and 2) it was not alleged that the petitioners had any peculiar rights in Irwell Street, or in the adjacent houses, but merely that they used Irwell Street in common with the rest of the public, and that the closing up of that street would be productive of inconvenience; (3) the corporation of Salford had petitioned, and were the proper opponents to be heard.

The *locus standi* of *Messrs. Ellis* was objected to, because (1 and 2) their property did not abut upon that part of Irwell Street to which the bill related; and accordingly they had no more right to be heard separately than other inhabitants of Salford; (3) the control and custody of the streets being in the corporation of that borough, it was their exclusive function to

protect them; and the petitioners had no such right.

Rees (Parliamentary Agent, for owners, &c., of collieries, &c.): Our interest is twofold. The stopping up of Irwell Street will deprive us of an alternative route, which we do not ordinarily use, it is true, but which we must use when the other route is blocked; and it will prevent an improvement of the existing route which is urgently required. The corporation of Salford do not represent us; we are the outside public, and ours is a through traffic to Manchester and elsewhere. If the corporation brought in this bill themselves we should equally claim to be heard against it. Traders using a railway station to obtain access to points on the line will be heard against a proposal to stop up the station. (*Great Eastern Railway Bill*; *Cliff. & Steph.* 70.)

Newall (Parliamentary Agent, for Messrs. Ellis): Some of the articles which we manufacture are of such length that they can only be taken out diagonally into Irwell Street. Under the bill our works, therefore, will be completely blocked up. Last year we passed out 86 articles of this class, worth £1,500 each.

Mr. RICKARDS: Does all your traffic pass into Irwell Street, or is there any other outlet for it?

Newall: For this large traffic there is no other outlet. The injury to our business must be serious; but I rely also on the injury to the value of works constructed for this special purpose. What we seek is not money compensation, but structural facilities. I rely on the precedent of the *Birkenhead, Lincolnshire, and Cheshire Junction Railway Bill*. In that case, level crossings having existed for many years with the consent of the local authority, the company sought power to stop up a part of a street. But the landowners having frontages opposed, not merely those on the appropriated portion, but those on the road leading to this portion, who used it for their business and other purposes. In the House of Commons we obtained a clause providing that any person who might suffer injury in respect of the proposal should have compensation; and in the House of Lords we obtained a further clause specially reciting our injury, and declaring us entitled to compensation. The clause was so fatal to the company that they withdrew the bill. The law as to compensation for injuriously affecting is so unsettled, that in justice we ought to be heard.

Pope, Q.C. (for promoters): The corporation of Salford are the local authority, and have power, under special acts, to control the traffic. Every question, therefore, arising as to the stopping up of Irwell Street, must be raised upon their petition. The persons representing the coal trade have no more right to be heard separately than omnibus or cab proprietors, who would like to have a choice of routes.

Mr. RICKARDS: Suppose, instead of closing a road by Act of Parliament, proceedings for that purpose are taken under the Highway Act. On appeal to the Quarter Sessions, who are entitled to be heard?

Pope: The inhabitants of the district or township using the road.

The CHAIRMAN: As regards a highway generally, may not any member of the public bring an indictment for obstructing it?

Pope: I never remember a case at Quarter Sessions where any but the inhabitants of the township were heard. And at the time when questions of *locus standi* were argued before Committees, the practice, in turnpike cases, universally was never to admit anybody outside the township, or outside the jurisdiction affected by the bill. It was not enough for a man to say, "I am one of the public using the road." There is no allegation showing these coalowners to be anything more than members of the public using the road. If they are outside members, according to practice, they are not entitled to a hearing; if they are inhabitants within the district, they are represented by the Corporation as the street authority.

Mr. RICKARDS: A person living outside the boundary might use the road as much, or more, than some parties living within it. By this bill, you are taking away the power of appeal which those who use the road would have under the ordinary law, if it was sought to stop up the road; and, inasmuch as they would have a *locus standi* before the Justices when it was proposed to stop up the road, ought not they, *pari ratione*, to have a *locus standi* against this bill?

Pope: That is not quite an analogous case. Before a man can divert a public highway, he must obtain the consent of the Justices, give certain notices, and provide a highway either nearer or more convenient than the one sought to be closed. But here the corporation are the protectors of the rights of the public regarding streets. If the corporation chose to say to-morrow, "You shall not go down Irwell Street," the coal carts could not go down there.

Mr. RICKARDS: But the corporation could not close the street without an Act of Parliament. If the corporation were bringing in a bill to close the street, would not the parties using the street, and whose interests were affected by it, have the right to be heard?

Pope: I do not know of a single case in which the mere users of a street were heard as to the closing of a street against a corporation, though the inhabitants of the district may have been. There is no allegation of special user, or specific interest in this street, or that by reason of inadequate access traffic is impeded.

Rees: The corporation of Salford sought power to direct what routes particular traffic should use, but this was refused. All they have is the power of marshalling and controlling the traffic.

Pope: As to Messrs. Ellis, they have no property and no frontage in Irwell Street. But they allege that some of their goods must go in that way, being unable to turn in the other direction. It is for the Court to say whether that is a special injury which will confer a *locus standi*.

The *locus standi* of both sets of petitioners was Allowed.

Agents for Bill, *Dyson & Co.*

Agents for Owners, &c., of collieries, *Dorington & Co.*

Agent for Messrs. Ellis, *Newall*.

of (4) LONDON AND NORTH WESTERN RAILWAY COMPANY.

— Allegations in Petition—Must be admissible—Though not objected to.

1 allegation in a petition was not specifically objected to, and a *locus standi* was made on that ground:

1st the allegation must be sufficient in itself to constitute a grievance according to law. The mere fact of non-objection did not give the petitioner a *locus standi*.

Petitioners opposed, on the ground of law, two lines of railway authorised by Act. The objections taken were, in substance, that the competition already existed, and that the interest of the petitioners was too small.

(for petitioners): We say in our petition the carrying of traffic by one of these lines will diminish the receipts on the North Metropolitan Railway, of which we are proprietors along with the promoters, and thereby that we will suffer great loss. That is a material allegation, and as no objection pointing to it has been made, we are entitled to a *locus standi* on that ground.

J.C. (for promoters): Even supposing the material allegation to be true, it does not give you a *locus standi*.

P: It is not objected to, and it is just as much before the Committee without any objection to it.

RICKARDS: But you must show that it is a grievance which, according to the law of Parliament, would confer a *locus standi* on you.

P: Not if they have not objected to it.

RICKARDS: Yes; whether they object or not, it will not support your *locus standi*, because, objecting to it will not make it a ground for a *locus standi*.

Q.C., was stopped in his reply.]

standi Disallowed.

for Petitioners, *Blenkinsop*.

THE METROPOLITAN TRAMWAYS BILL.

of (1) the GREAT EASTERN RAILWAY COMPANY; (2) the METROPOLITAN RAILWAY COMPANY.

1871.—(Before Mr. DODSON, M.P., Chairman. Mr. WYNN, M.P.; and Mr. RICKARDS.)

Tramways—Opposing Railway Companies—S. O. 135 (Tramway Bills)—Frontagers—Railway Station—Above and underground—Approaches to—Yard or Forecourt—Public Footpath—Workmen's Trains—Competition.

It was proposed to carry a line of tramway past the station of an underground railway, the station building being upon the footpath; and also past a railway station, fronting the road on which the tramway would be laid, but standing at a distance of 50 or 60 yards from the road, a court-yard and approaches intervening:

Held, that stations so situated were within S. O. 135, and that the petitioners had a *locus standi*.

Semble: That the exact words of S. O. 135 need not be pleaded to afford a *locus standi* to frontagers, if it is clear that, under the bill, they will be prejudiced in the conduct of their business.

The bill was one to incorporate a company and to authorise the construction of several tramways, including one starting from the point where Threadneedle Street joins Bishopsgate Street Within, thence along Bishopsgate Street, and in front of the Great Eastern company's station, to Kingsland Green, Stoke Newington, and Stamford Hill. It also passed in front of the Metropolitan railway company's station at Aldersgate Street. The Great Eastern and the Metropolitan railway companies petitioned on the same grounds—that the line of tramway passed in front of their respective stations. Adjacent to theirs the Great Eastern alleged that they had extensive goods' stations and warehouses; also that the tramways would injuriously compete with their suburban railways; and that it would be especially unfair to expose them to such competition, inasmuch as they were bound to run labourers' trains at very low rates for the accommodation of the workmen employed in this part of the metropolis.

The *locus standi* of the Great Eastern railway company was objected to, because (1) no lands, &c., of theirs are taken or used; (2) although one of the proposed tramways will cross in front of the company's station, the bill contains no powers under which the promoters could in any manner interfere, injuriously or otherwise, with the said railway; (3) no case of competition or diversion of, or interference with, traffic is disclosed, entitling the petitioners to be heard; (4) the petitioners have not such a right or interest in the streets of the metropolis as entitles them to be heard; (5) no objection is raised, which, according to practice, entitles them to a hearing.

The objections to the *locus standi* of the Metropolitan railway company were to the same effect.

Bidder (for Great Eastern company): We have two grounds of *locus standi*: 1st. we are within the terms of S. O. 135, the tramway going along the highway in front of our metropolitan terminus, and the station coming within the definition of a "house" or "warehouse." If an ordinary frontager has an interest entitling him to be heard, *a fortiori*, a railway company has a right to be heard in respect of a metropolitan station. Our second title to a *locus standi* is competition.

Rodwell, Q.C. (for promoters): The Great Eastern station is at a distance of 50 or 60 yards from the street. No doubt the entrance gates are in front of the Shoreditch terminus, but the company are not frontagers within the meaning of the S. O., nor does their case come within the principle of the *North Metropolitan Tramways Bill* (2 Cliff. & Steph. 89) where the North London company claimed as frontagers not only in respect of their station, but also as occupiers of a dwelling-house adjoining the station. I submit that a person who has a long garden in front of his house, but whose gates only front the road is not within the spirit of the S. O. It cannot be contended that the additional stream of traffic can interfere with him in the conduct of his trade or business. A frontager is a person whose house, shop, or warehouse is affected.

Mr. RICKARDS: The S. O. contemplated, not merely a "house," but a "warehouse." This is a yard, or forecourt. If a man is entitled in respect of a warehouse, should not he be entitled in respect of an access of this kind? Would not you consider the approach to a warehouse as part of the frontage? It is not necessary, in order to give them a *locus standi*, that they should bring themselves within the exact terms of that S. O.; because the Referees would have a discretion to give them a *locus standi*, on the ground that they would be prejudiced in the conduct of their business.

Rodwell: The general principle of tramways has been recognised, and the opinion now is that, instead of increasing impediments to traffic along the streets, they tend to diminish them. I submit that the approach to a warehouse, or a house, does not come within the word "frontage," so as to entitle petitioners to a *locus standi* under S. O. 135.

Mr. RICKARDS: The access to the station may possibly be obstructed while the tramway is being laid down?

Rodwell: The Act will deal with that; and the proper people to protect the traffic are the road authorities, who have the control of the streets. Here the local authorities have agreed to the construction of the tramway, and say it will be no impediment. The only question is, whether an access to a warehouse is to be deemed a frontage. I submit that the S. O. was intended to deal with cases where the traffic would prevent people from driving up to the house or shop in which persons were carrying on business, that is to say, in immediate proximity to the road.

The CHAIRMAN: The petitioners are entitled to a *locus standi*.

Hollway (for Metropolitan railway company): That decision applies to my case. We are in the

same position. The tramway passes before our station in Aldersgate Street.

Rodwell: You pass underground, and we take the surface.

Hollway: No; the entrance to our station fronts the street through which the tramway passes. The station building is on the footpath.

The *locus standi* of both the Petitioners was Allowed.

Agents for Bill, *Sherwood & Co.*

Agents for Great Eastern railway company, *Baxter, Rose & Norton.*

Agents for Metropolitan railway company, *Burchells.*

[The authority of this case was afterwards impugned (See pp. 188 & 193) so far as regards the right of frontagers to a general *locus standi*, and the Court refused to recognise the precedent, following the rule previously laid down in the *London Street Tramways Bill*, 1870 (2 Cliff. and Steph. 85); and *North Metropolitan Tramways Bill* (Ib. 89).]

Petition of (8) the NORTH LONDON RAILWAY COMPANY.

This case was not argued, the promoters conceding to the petitioners a *locus standi* against such provisions of the bill as might authorise an interference with any of their bridges and works. (*North London Tramways Bill*; 2 Cliff. & Steph. 82.)

Agents for Petitioners, *Paine & Layton.*

ALLIANCE AND DUBLIN CONSUMERS GAS BILL.

8th May, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. ADAIR, M.P.; and Mr. RICKARDS.)

Petition of (1) GAS CONSUMERS OF THE CITY OF DUBLIN.

Gas—Testing—Illuminating Power—Rating of Mains, Exemption from—Recovery of Gas Rents—Municipal Corporation—Agreement with Gas Company—Consumers—Ratepayers—Representation—Distinct Interests—How far recognised—Limited Locus Standi.

A bill promoted by a gas company to vary the illuminating power fixed by agreement with the corporation of Dublin, to relieve the company from additional rates during the

continuance of that agreement, and to enlarge the powers of the company in other respects, was opposed, on very similar grounds, both by the corporation of Dublin and by "inhabitants, gas consumers, owners of property in, and ratepayers of, Dublin and suburbs."

And, that the inhabitants, &c., might be heard apart from the corporation as to questions of notice, recovery of gas rents, and change of illuminating power, but not as to rating of the company's mains, or the other portions of the bill.

The bill was one promoted by the Alliance company, which lights the City of Dublin, and a large surrounding district, "to amend the company's former Act of 1866, to enable the company to dispose of surplus lands, and store gas on other lands, to define the rates payable by the company to the corporation, during their existing contract, and for other purposes."

The "inhabitants, gas consumers, owners of property in, and ratepayers of Dublin, and suburbs," objected to the summary powers contained in the bill, as to the notices required from consumers, and the recovery of gas rates by distress, also to a proposed exemption from taxation of the gas mains of the company, during the continuance of their contract for public lighting, but mainly to clauses authorising a new mode of testing, under which they alleged that, in fact, though not in name, the illuminating power of the gas would be reduced to the extent of two candles.

The *locus standi* of the consumers, &c., was objected to, because (1) they did not allege or show that they represented, or were entitled to represent the inhabitants, gas consumers, owners of property in, and ratepayers of Dublin; (2) they were already represented by the corporation of Dublin, who were opposing; (3) no lands, &c., the petitioners would or could be taken or acted under the bill; (4) there were no grounds for a hearing according to practice.

Richards, Q.C. (for petitioners): The arbitrary clauses as to notices, recovery of gas charges, &c., are matters affecting the consumers individually, and the corporation cannot represent us. Then, as to municipal rates; if the company escape from liability to them, we shall have to make good the deficiency. The change in the quality of gas is not apparent on the face of the clause; but by substituting a different test-burner than that now in use, gas which has hitherto been used as 14-candle gas will do duty as 16-candle gas, and we shall have to pay one-seventh more on the same article. The objections are only as to the consumers, &c., of Dublin; those in "suburbs" are not objected to.

Pembroke Stephens (for promoters): The objections follow the endorsement on the petition.

Richards: We rely on the heading of the petition; and in any case the corporation of Dublin does not represent the petitioners in the suburbs.

As to price, it is impossible they can represent the consumers in Dublin itself, for their interests, which are merely to cheapen public lighting, are antagonistic to those of the consumers. In proportion as the price of public lighting is reduced, so is the period postponed at which, by the accumulation of profits, the private consumers become entitled to a reduction in price. The ratepayers will benefit by any terms the corporation may obtain, but the consumers will suffer. Though there are only 135 signatures to the petition, it will not be denied that some of these are very influential, and represent perhaps the largest consumers in the city.

Stephens: But they make no allegation that their interests are distinct from those of the corporation.

Mr. RICKARDS: How are the consumers to know that there is also a petition from the corporation?

Richards: I admit that the corporation do petition, and, as regards the illuminating power, in very similar terms; moreover, that their *locus standi* is not objected to. But their objects and interests are widely different from ours.

Stephens (in reply): The petitioners claim to be gas consumers, not only in Dublin, but in the suburbs, which are exceedingly wide, and consist mainly of townships, controlled and represented by bodies of commissioners as the city of Dublin is by the corporation.

Richards: There is nothing about "townships" either in the bill or the petition?

Stephens: No; and hence the difficulty in knowing what particular "suburbs" these petitioners belong to. Individual addresses are given in some cases; but there is no allegation whatever that any "suburb" will be injured by the bill.

Mr. RICKARDS: Or that any of the petitioners are not within the borough of Dublin?

Stephens: If no public body thinks it worth while to oppose, individuals usually put themselves in a position to appear, by holding a meeting and adopting a petition. But here there is no appearance whatever of joint action; the petition is merely from individuals who do not object as a class, and who speak mainly, though not exclusively, of the injury which the bill will inflict upon the citizens and ratepayers of Dublin. They do not allege that the rates will be increased, or that any particular district will be injuriously affected. What they do complain of is alteration in the illuminating power, and on this point the corporation, who represent them, have a great deal to say. The distinction in point of interest, contended for in argument, between the consumers and the corporation, is not suggested in the petition, and is negatived by former decisions of the Court. The principle which was affirmed in *King's Lynn Consumers Gas Bill, 1870* (3 Cliff. & Steph. 4), and again in *King's Lynn Gas Bill* (1b. 5) applies to this case in all respects.

The Court (after deliberation): The *locus standi* of the petitioners is allowed against Clauses 5, 6, and 10; (those dealing with notices to consumers, recovery of gas rents, and change of

illuminating power) and so much of the preamble as relates thereto.

Mr. ADAIR: It will be perceived that we have not allowed the *locus standi* of the petitioners against Clause 11 (exempting the company's mains from taxation during the agreement with the corporation).

Agents for Bill, *Dorington & Co.*

Agent for Petitioners, *Bell.*

Petition of (2) JAMES MARTIN.

Gas—Storage of—Repeal of Restriction upon—Adjacent Landowner—Prospective Injury to—Depreciated Value of Property—Covenant by Landowner to build—Houses—S. O. 27.

A gas company being prevented by its existing Act from storing gas, except with consent, upon any lands situate within 200 yards of a dwelling-house, sought the repeal of this restriction:

Held, that an owner of adjacent lands was entitled to a hearing against the proposed repeal, although his land lay at a distance of 300 yards from the works, no dwelling-house had yet been erected upon it, and it was not alleged in the petition, though suggested in argument, that he was under covenant to build.

Mr. Martin objected to the removal of a restriction as to the storage of gas imposed upon the company by their Act of 1866, alleging that the change would be injurious to his property.

His *locus standi* was objected to, because (1) the proposed repeal of so much of section 42 of the Act of 1866 as restrained the company from erecting works for the storage of gas on any lands to be purchased by agreement under that Act, within 200 yards of any dwelling-house existing at the time of such purchase, without the consent, in writing, of the owner, lessee, or occupier of such dwelling-house, would not affect the petitioners, inasmuch as it was not shown that the company purchased any lands within 200 yards of any dwelling-house of which the petitioner was owner, lessee, or occupier; (2) no lands, &c., of his were, or could be, taken under the bill; (3) there was no ground according to practice for a hearing.

O'Hara (for petitioner): The 4th section removes the restriction, as to the storage of gas upon particular lands, imposed upon the company by the Act of 1866, and so deprives my client of protection which he now enjoys. The company do not ask openly for power to store gas upon particular lands, but, in effect, for power to store gas generally, though it may be in the next field to us; being at present prohibited from doing so within a distance of 200 yards, unless with our consent. Clause 42 of the Act of 1866 was really an indulgent clause to the company,

for it reduced the usual limit of 300 yards, under S. O. 27, to 200 yards; yet they are not content.

Pembroke Stephens (for promoters): The S. O., and Clause 42, both refer to dwelling-houses, not lands; and the petitioner has no dwelling-house near the works of the promoters.

O'Hara: The injury which they will do to us is future. We are under covenant to build houses on the lands we have leased; at present we can do so, and they cannot come within 200 yards of any house so built. But if this bill passes, they can come within six inches.

Mr. RICKARDS: The petition does not allege that Mr. Martin is under covenant to erect houses. He would have strengthened his case had he stated this.

O'Hara: No doubt, technically, the petition might be more definite. But it is almost impossible, by any form of words, to meet such a bill as this.

Pembroke Stephens (in reply): The grievance ought to be one capable of statement in a definite and tangible form. And the language of this petition is equivocal, for it speaks of dwelling-houses, "erected, or to be erected," there being, in fact, no dwelling-houses of the petitioner within, or near, the protected limits. If this gentleman bought, or leased land, and covenanted to erect houses within 300 yards of our works, he did so with his eyes open. S. O. 27 applies to manufacture, not to storage of gas. If the petitioner has a grievance, he has failed to show it.

Mr. RICKARDS: Suppose a gas company to be under a restriction not to store gas within 200 yards of any dwelling-house, and while that restriction continues a person acquires land adjacent to the lands of the gas company, is he not injured if the company afterwards come to relieve themselves from that restriction, thereby compelling him, if he carries out his intention of erecting a dwelling-house, to do so within an inconvenient distance of their storage works?

Stephens: At most, it is an apprehension of possible injury which, in this case, will not arise. But if the Court think the point material, the petitioner should only be heard against the storage clause.

By the COURT: The *locus standi* of the petitioner is *Allowed* against Clause 4, and so much of the preamble as relates thereto.

Agent for Petitioner, *Sharkey.*

BRADFORD CANAL BILL.

8th May, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. ADAIR, M.P.; and Mr. RICKARDS.)

Petition of THE UNDERTAKERS OF THE AIRE AND CALDER NAVIGATION.

Canal—Sole Outlet—Waters Polluted—and Dried Up—Court of Chancery—Proposed Sale—Approved by—Rights of Navigation—Apprehended Destruction of—Water supply un-

obtainable—Adjacent Canals—Subsidised by Railways—and independent—Ten miles distance.

A bill was promoted to authorise the sale of a canal in two parts. The first 550 yards at one extremity of the canal was to be filled up and built upon; the residue of the undertaking was to be purchased and worked as a canal, by a limited company to be formed for that purpose. In the event, however, of their non-formation or failure, powers were taken to sell that section of the canal also, "either as an entirety or in lots," freed from all liability to maintain it as a canal. The bill was opposed by a navigation company who had power to use the canal for their traffic. The canal itself had been dry for four years, the supply of water on which it depended being cut off by injunction of the Court of Chancery, which had likewise ordered the canal company to be wound up, had approved of the proposed sale, and given authority for the bill to be promoted. An independent canal, ten miles in length, which the petitioners had also power to use, intervened between their own system and the canal proposed to be sold; the latter terminating in the town of Bradford, and beyond this point there was no outlet by water. The petitioners contended that the provisions as to future maintenance of the shortened canal were illusory, and that the real intention was to get rid of any such obligation:

Held, notwithstanding the long stoppage of navigation upon the canal, and the sanction of the bill by the Court of Chancery, that the petitioners were entitled to a *locus standi*.

The bill was one "to authorise the sale of the property of the Bradford canal company." This canal, three miles in length, and authorised in 1770, extends from Bradford to Shipley, where it joins the Leeds and Liverpool canal, which at Leeds, ten miles off, communicates with the Aire and Calder navigation, and so with the manufacturing and mineral districts of Lancashire, the port of Liverpool, and with the Humber. Except by this canal, there is no traffic outlet by water from Bradford. The canal, however, was closed to navigation in May, 1867, the use of the Bradford Beck, the waters of which supplied the canal, being forbidden by injunction of the Court of Chancery, in consequence of their becoming fouled with sewage. The Bradford canal company, accordingly, was ordered to be wound up, and this bill, promoted with the sanction of the Court of Chancery,

sought power to sell the canal to certain merchants, described in the agreement set out in the schedule to the bill as "eleven of the shareholders in, and proposed directors and managers of a certain company intended to be immediately formed and registered under the Companies' Act, 1862, and to be called 'The Bradford canal company (limited).'" One portion, 550 yards of the upper part of the canal, was proposed to be sold to these persons absolutely for building or other purposes; the rest of the canal, according to the agreement, was ostensibly, to be purchased and maintained by them for purposes of navigation. Clause 6, however, of the bill, provided that "if, in pursuance of one of the stipulations of the contract, the lower part of the canal should be reconveyed by the purchasers to the canal company, or should otherwise remain in or revert to the canal company by reason of any such default on the part of the purchasers as the contract specified, or if from any other cause or reason whatever the contract should not be carried into effect, the canal company or the official liquidator might, with the leave of the Court, and upon such terms and conditions as the Court should approve and prescribe, sell and convey the lower part of the canal, either as an entirety or in lots, to any person or persons, or to any corporation or company whom the Court might approve, freed from all liability and duty to maintain such lower part as a canal or navigation." This clause, according to the contention of the Aire and Calder navigation, disclosed the real object of the bill, *i.e.*, to break up and discontinue the canal altogether.

The *locus standi* of the petitioners was objected to, because (1) the only paragraphs in the petition upon which a right to be heard can be founded are the fourth, in which the petitioners state, that the owners of the Aire and Calder navigation have derived a large annual income in respect of the passage over their navigation of the traffic interchanged with the Bradford canal; and the fifth, in which the petitioners state that they were carriers upon the Bradford canal up to the time when it ceased to be kept open for traffic; (2) the Bradford canal, until the year 1867, when it was closed for want of water, commenced in the town of Bradford, and was not connected there with any other navigation; its other terminus was in the Leeds and Liverpool canal, of which the Bradford canal was, in fact, a branch; there intervenes between the terminus of the Bradford canal and the Aire and Calder navigation, more than ten miles of the Leeds and Liverpool canal. If the petitioners have a right to be heard concerning this bill, the owners of any more remote link in the chain of internal navigation would have an equal right; (3) the proprietors of the Leeds and Liverpool canal petition against the bill, and no objection is made by the promoters to their petition.

Granville Somerset, Q.C. (for petitioners): If the bill passes, the result will be that the water communication of Bradford will be cut off from the rest of England, and, instead of competition between the railways and the canal, the railways will have the entire monopoly. Clause 6 enables the company to sell off pieces of the canal, as

they may choose, and once the bill passes, no one will be able to object to their doing so. But the Act of 1770 specially provided that the undertaking thereby authorised should be used for no other purpose than as a canal. Under the General Canal Carriers Act, 1845, we have power to carry goods to and from Bradford by water, making use for that purpose of the Leeds and Liverpool, and of this canal. And to the last moment that this canal was open, we interchanged traffic with it, consisting principally of stone carried from quarries in the neighbourhood of Bradford to Goole, for shipment to London and elsewhere, and of coal carried to Bradford from collieries upon our own navigation, and of general merchandise. Against a similar bill, in 1867, to close the upper part of this navigation, we established our *locus standi*, and the bill was thrown out. The promoters come again, they say, by the leave of the Court of Chancery; but what they mean is, that the Court, being unable to make up its mind how to deal with the matter, sends them here to ask Parliament for its opinion. And the question is, with the rights we have over this canal, whether it should be stopped up without our being heard? We say that it is for the public benefit to keep the canal open, and that it ought to remain vested in the existing company, or be transferred to some other company, able to maintain it in proper condition. If the transferees can procure a fresh and adequate supply of water, so can the existing company; if a supply of water cannot be obtained, then the provisions of the agreement as to maintaining the canal are purposely deceptive. The objection that we ought not to be heard, because the Leeds and Liverpool company, whose canal intervenes for 10 miles between the Bradford canal and our navigation, are also opposing, has no weight whatever. Our interests differ entirely from those of the Leeds and Liverpool canal. They have an agreement with the railway companies, under which, in consideration of charging their highest rates upon merchandise, they receive from the railway companies a considerable sum yearly. We cannot, therefore, trust them. Where one railway company has running powers over the line of another, and a proposal is made to stop and cut off the line over which those powers exist, could it be suggested that the company having the running powers ought not to be heard? Substitute canal for railway company, and this is a parallel case. The following decisions are in point:—*Swansea Canal Transfer Bill*, 1865 (Smeth. 124); *Great Western Bill* (*Bargood Branch*), (Cliff. & Steph. 80); *London, Brighton, and South Coast Bill*, 1868 (*St. Leonard's Branch*), (Cliff. & Steph. 82); *Midland Bill*, 1869 (*Settle and Carlisle Branch*), (Cliff. & Steph. 83); *Caledonian, &c., Bill* (*Forth and Clyde Canal*), (Cliff. & Steph. 90). There is no water communication of any sort from Bradford to any other place, except by this canal.

Round (for promoters): The petitioners assume that this is a bill for closing the Bradford canal; but, in fact, it is a bill for opening part of the canal, which has been closed throughout, for the last three years, from circumstances wholly beyond our control, though in accordance

with the decision of the proper tribunals. The Court of Queen's Bench, before whom the matter was brought by *certiorari*, decided that the mere fact of the canal company having a statutory power to use the water of the Bradford Beck would not justify them in using it, the moment it became a nuisance, although the company could get no other supply; and by injunction of the Court of Chancery, the company were thereupon restrained from continuing to use the water of the Beck. The result was that, the water being drained off, the canal became an open trench, in which condition it still remains. What were the canal company to do? They applied to the Court of Chancery for a winding-up order, and the Aire and Calder company appeared, and made every objection. The Vice-Chancellor, however, satisfied himself that there was no water to be got, and that the company had ceased to carry on business, and he accordingly made the order. But though the company might wind up their affairs, they could not sell the land which formed the bed of the canal and towing path, having acquired this land a hundred years ago, under statutory powers, for one particular purpose. The promoters come to Parliament accordingly—not to enable them to close the canal, which is closed already, and the appeal by the Aire and Calder against the winding-up order has been dismissed; but they come for powers enabling them to sell the land. The sanction of the Court of Chancery has been asked to the contract for sale, which is scheduled to the bill; and special orders have been also made by the Court enabling the official liquidator of the canal company to apply for, and do all things necessary for obtaining an Act of Parliament authorising him to sell and transfer the lands, &c. The upper part of the canal being in the town of Bradford, must, in any event, be closed; and as to the lower part, the contract provides for its preservation and maintenance as a canal. It is only in the event of the contract falling through, that we take the same power to sell as with regard to the upper portion. As regards the lower part, the petitioners, and through them the public, will have precisely the same rights as they have now, and the new company or transferees of the canal will be subject to the same obligations, and will have to perform the same duties as the existing company. If, however, their expectations of obtaining a suitable water supply prove too sanguine, it is provided that they may, after two years, sell the lower as well as the upper part of the canal.

Mr. RICKARDS: This bill confirms a contract for a sale. Instead of giving a general power to sell, it is to confirm an actual sale which has been made?

Round: Yes; and the promoters ask with respect to the lower part of the canal, in the event of this scheme not proving successful, for the same power of absolute sale which they take in regard to the upper portion, which no one will undertake to keep open as a canal. If the canal continues as an open trench it must become a nuisance to everybody; and as the whole of the canal cannot be kept open for traffic, the proposition is to meet objections as far as possible, by keeping open part of the canal. It is a bill for doing what the Court

of Chancery has declared to be necessary and proper. The petitioners' interest, moreover, is too remote. By means of different canals, water communication extends from the Regent's Park to Bradford. If the Aire and Calder, 10 miles off, are to be heard, having to pass over an intermediate canal to get to Bradford, every other canal forming a link in the communication would have a right to be heard. We do not know the circumstances of the bill of 1867; and this is an exceptional case. In the instances cited, there was a voluntary abandonment of a line by one railway company, which prejudicially affected another company; whereas here the abandonment is not voluntary, but imposed upon us by law.

The CHAIRMAN (after consultation): The *locus standi* of the petitioners is Allowed.

Agents for Bill, Dyson & Co.

Agents for Petitioners, Grahames & Wardlaw.

LONDON STREET TRAMWAYS BILL.

8th May, 1871.—(Before Mr. DODSON, M.P., Chairman; Mr. ADAIR, M.P.; and Mr. RICKARDS.)

Petition of THE METROPOLITAN RAILWAY COMPANY.

Practice—Tramway Bill—Underground Railway—Petition—Sufficiency of Allegations in—Frontagers—Stations—Powers of making certain Tramways struck out of Bill—Provisional Orders substituted—Omnibus Traffic—Competition.

The Metropolitan railway company opposed a tramway scheme on the ground of competition, alleging that the proposed lines of rail would be "laid down on the surface of streets underneath which" the petitioners' railway was constructed:

Held, that this allegation was not sufficiently specific to entitle the petitioners to a *locus standi*, either as frontagers under the S. O. or as persons liable to sustain an injury through the construction of the tramway; and held also, that they had no *locus standi* on the ground of competition.

The bill was one for the construction of additional street tramways in the metropolis, including lines between Bayswater and Islington, Hampstead Road and Euston Road junction, King's Cross and Blackfriars, Islington and the General Post Office, and Goswell Road and Farringdon Road junction.

The petitioners alleged that these lines were in direct competition with their railway, being

in great part intended to be laid down on the surface of streets underneath which their railway was constructed; that the petitioners had expended upon their undertaking more than £7,000,000, this enormous outlay being incurred by them in the belief that they would be exempted from undue competition; and they complained that, under the bill, the promoters would establish such competition, and would use for that purpose public roads, towards the maintenance of which the petitioners as ratepayers largely contributed.

The *locus standi* of the petitioners was objected to, because (1) no competition will be caused by the bill, if passed, entitling the petitioners to be heard; (2) no lands, property, &c., of theirs are taken or used; (3) it is not alleged that petitioners are owners or occupiers of any house, shop, or warehouse within the meaning of the S.O.; (4) they have no sufficient interest.

Hollway (for petitioners): We claim a *locus standi*, first, as frontagers, and, secondly, on the ground of competition.

The CHAIRMAN: Is it admitted that you are frontagers?

Sargood, Serjt. (for promoters): There is nothing in the petition about it.

Hollway: I admit that there is no distinct allegation in the petition, following the words of the S. O.; but substantially our petition discloses to the promoters that we are frontagers, and consequently under the S. O. we have a right to be heard. We set out the particular tramways proposed to be authorised; and it is perfectly well known to the promoters, that we have alongside the Euston Road and Marylebone Road—i.e., along the line of their tramway—certain stations. The tramway proposes to crawl along our backs, or along the top of our tunnel. The reason why particular allegations are required in a petition, is to point out to the other side what is complained of. From our petition it is to be inferred that we object to the tramway as frontagers.

Mr. RICKARDS: Who could infer, from what you have read, that you were liable to have your stations interfered with by the construction of the tramway? If your petition shewed that you were liable to sustain injury by the tramway, you would have a *locus standi*, independently of the S. O., but I do not even see any such statement.

Hollway: We state that certain of the tramways are in direct competition with the Metropolitan railway, and are in great part intended to be laid down on the surface of streets underneath which the Metropolitan railway is constructed and at work. Any one reading the petition must know that those tramways pass along streets in which, at short intervals, there are stations belonging to the Metropolitan railway company.

The CHAIRMAN: But you have not raised the question? We will hear you on the point of competition.

Sargood: We have struck out of this bill four out of the five lines of tramways, for which Provisional Orders have been granted by the Board of Trade. In fact, there will only be a small portion of the fifth line remaining in this

bill, viz., from Lisson Grove to Albany Street, Regent's Park.

Hollway: And that part is indirect competition with us.

The CHAIRMAN: That is only a distance of half-a-mile?

Hollway: Yes; but we carry an immense number of passengers for short distances. We are an omnibus line. We have expended a large amount of money in relieving the streets from omnibus traffic, and carrying it on under the streets. What the tramway company now propose to do is to take away from us some share of that traffic, and re-introduce it into the streets. This case is to be distinguished from previous decisions. (2 Cliff. and Steph. 82.9.)

Sargood: The petitioners will be able to oppose the Provisional Order.

Hollway: We shall then be entitled to oppose the main portion of the tramway, which will compete with us for five miles; but if you exclude us here, we shall be unable to oppose this little link in the chain.

(*Sargood* was not called on to reply.)

Locus standi Disallowed.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Dyson & Co.*

MERIONETHSHIRE RAILWAY BILL.

12th May, and 2nd June, 1871.—(Before Sir T. E. COLEBROOKE, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of the FESTINIOG RAILWAY COMPANY.

Practice—*Railway Companies*—*Competition*—*Evidence taken before Committee of House of Lords upon Bill*—held Inadmissible.

Rehearing—*Application for, rejected.*

Upon a claim for a *locus standi* on the ground of competition, counsel for the petitioning railway company was not allowed to refer to evidence given upon the bill in the House of Lords by the promoters' witnesses, the Referees holding that they must proceed upon the bill, petition, and objections alone.

A subsequent application for a rehearing, upon the ground that, through the rejection of this evidence, the Court had decided under a misapprehension of the facts, was refused.

The bill, for the construction of a short line of railway, was opposed by the petitioners, who were apprehensive that the slate traffic, which they now enjoyed exclusively, would be abstracted by the new line.

The *locus standi* of the petitioners was objected to, because (1) the railways proposed by

the bill will not compete or interfere with (2) or start from or go to the same point as their railway, but will serve a totally different country, and the gauge will be entirely different, and constructed to carry a totally distinct description of traffic; (3) no land, &c., of the petitioners is taken or used; (4) they are not entitled to be heard according to practice.

Michael (for the Festiniog railway company): The petition is against a bill, which has passed the House of Lords, for constructing a line called the Merionethshire railway from Festiniog to Llandecwyn, joining there the Cambrian railway. We claim a *locus standi* on the ground of competition, our line running on one side of the Festiniog Valley from Dyffws to Portmadoc, and the Merionethshire railway running on the other side of the valley. Commencing at Festiniog, the proposed line joins the Blaenau and Festiniog line, an independent railway with statutory powers, not yet constructed. Though the gauge of that line is 2ft. 8in., the works have been constructed for a 4ft. 8in. rail, and the promoters proposed to continue the 4ft. 8in. gauge (which will be the gauge of their line) over the Blaenau and Festiniog line.

Pope, Q.C. (for promoters): Where is that stated?

Michael: By the promoters' witnesses in the House of Lords.

Pope: You must go by the bill.

Michael: I pray in aid the evidence given before the Committee in the other House.

Pope objected.

Mr. RICKARDS: Our rule is to take the bill, the petition, and the grounds of objection. It is upon them we proceed, and there is no more reason for receiving evidence given on this bill before the House of Lords, than any other evidence given before any other Committee.

(*Michael* was further heard in support of the *locus standi* on the ground of competition; and *Pope* replied.)

Mr. RICKARDS: Supposing the Blaenau and Festiniog to alter their gauge, the 40th clause of the bill would give you power to make agreements with them?

Pope: No doubt it would; but even supposing we were at Dyffws, and on the same gauge, we could not interfere with their traffic, because, as they say themselves in their petition, they have absolute control over it.

Locus standi Disallowed.

Agents for Bill, *Wyatt & Hoskins.*

Agents for Petitioners, *Dorington & Co.*

2nd June, 1871.—*Clerk*, Q.C., applied to the Court (constituted as before) on behalf of the petitioners, to rehear the case, the *locus standi* of the Festiniog railway company having been refused upon a misapprehension of the facts by the Court. The case of the *Royal Buryh* (Cliff. & Steph. *Practice* 85; *Smeth.* 183) was a precedent showing that the Court would grant a rehearing under such circumstances.

In the House of Lords the promoters' own witnesses proved that the line was projected in order to take traffic now carried by the petitioners' railway; and he submitted that the petitioners ought to be allowed to refer to this evidence, in any proceedings before the Referees concerning the same bill.

The Court deliberated.

The CHAIRMAN (Sir T. E. Colebrooke) said: The Court are of opinion that no sufficient grounds have been laid before them which would justify a rehearing of the case, or which induce them to believe that they were misled at the former hearing, as to the facts on which they refused to admit the petitioners to be heard against the bill.

Application for a rehearing Refused.

NEWRY BOROUGH IMPROVEMENT BILL.

8th May, 1871.—(*Before Mr. DODSON, M.P., Chairman; Mr. ADAIR, M.P.; and Mr. RICKARDS.*)

Petitions of (1) CESSPAYERS OF COUNTY OF ARMAGH; (2) OWNERS, &c., OF PROPERTY IN NEWRY.

Improvement Bill—Waterworks—Borough Boundaries—Roads and Bridges—Transfer of Jurisdiction—Grand Juries—County Cesspayers—Owners and Occupiers—Ratepayers—Representation—Bill Opposed by Commissioners—Really Extending their Powers—Towns Improvement (Ireland) Act, 1854.

Against an improvement bill for the borough of Newry, authorising the construction of additional waterworks, and the transfer to the borough of the roads, bridges, &c., within a certain district in the adjoining counties of Armagh and Down, two petitions were presented. Of these one was from 45 cesspayers of the county of Armagh, who, as owners and occupiers, objected to the proposed transfer. The second petition, from 255 owners, occupiers, and ratepayers in the town of Newry itself, objected to the burdens and provisions of the bill generally. The cesspayers of the county of Down had likewise petitioned; but a second petition, from the Down Grand Jury, being subsequently deposited, the cesspayers withdrew. The Grand Jury of the county of Armagh did not petition; and it was alleged that this was by arrangement with the Down Grand Jury, who were to represent both counties. The bill, though conferring important powers on the Town Commissioners of Newry, was not promoted by them, but

by an independent body; and the Town Commissioners petitioned against it, though not, as suggested, with any real hostility:

Held, that the cesspayers of Armagh had no *locus standi*; but that the owners, occupiers, and ratepayers of Newry should be heard.

This was a bill "for the improvement of the local government of the town of Newry; for the construction and maintenance of new waterworks; for supplying water to the said town and neighbourhood; and for other purposes." The bill also had, among its objects, to relieve the inhabitants of Newry from all future payment of county cess for the construction, repair, or maintenance of roads or bridges in the county of Armagh; to provide that the Grand Juries of the counties of Down and Armagh, respectively, should no longer exercise jurisdiction or incur liability with respect to roads, bridges, footpaths, or other public works within the borough; and to vest the jurisdiction on these matters in the new body of Commissioners, to be constituted under the bill.

The first petition was signed by 45 cesspayers of the county of Armagh, describing themselves as owners and occupiers of lands in that county, who objected to the proposed separation and transfer as injurious to their interests and those of the county.

The second petition, bearing 255 signatures, was from "owners and occupiers of houses and other property, ratepayers and inhabitants of the town of Newry." Their petition objected in minute detail to the various clauses of the bill, and to their probable operation within the borough.

The *locus standi* of the cesspayers of Armagh was objected to, because (1) those who signed it had no authority to represent the cesspayers of the county; (2) it was not alleged that any meeting of cesspayers had been called, and petitioners were neither the inhabitants nor municipal or other authority within the meaning of the S. O.; (3) no individuals or small section of the cesspayers had any right to assume the position of the Grand Jury as representatives of the county; (4) it was not alleged that the county generally would be injuriously affected by the bill; (5) no lands or property of the petitioners were taken or interfered with; (6) no sufficient interest was shown.

The *locus standi* of the owners, &c., in Newry, was objected to, because (1) the persons signing the petition had no authority to represent the owners, occupiers, ratepayers, or inhabitants of the town of Newry; (2) the population of Newry was about 15,000, but the meeting held with regard to the bill was only attended by 14 persons; (3) the Improvement Commissioners, who were elected by the owners, &c., of property, and ratepayers of the town, were the legitimate representatives of the petitioners, and had presented a petition in reference to the bill; (4) no lands or houses of the petitioners were liable to be taken; (5) they had no sufficient interest.

Manning, Parliamentary Agent (for both sets of petitioners): This bill will be injurious to the interests of cesspayers in the county. It was not necessary that a meeting should be held in opposition to the bill, for the petitioners themselves are persons who will be injuriously affected. The Grand Jury are supposed to represent us, but they are only summoned at the assizes for fiscal business, and cease to exist the moment the assizes are over. There will be a change of liabilities and duties under this bill, both in the borough and county. That is a ground of *locus standi*. (*County Down and Belfast Borough Bill, 1868; Cliff. & Steph. 131.*)

Mr. RICKARDS: What proportion does the rateable value represented by these petitioners bear to the rateable value of the county?

Manning: An important proportion. As to the petition of owners and occupiers in Newry, the bill is brought in nominally by the Commissioners, but in fact it is not signed by any of them. It is the bill of a certain body who have sought to be incorporated by it, or to have powers given to them—an *imperium in imperio*, in the shape of trustees of waterworks, viz., the Besbrook mills company. The Commissioners have already purchased the existing waterworks of the Halliwells Waterworks company, and made the town liable for them; and now they seek to construct new waterworks, or to give to this Besbrook mills company power to do so within the town. The owners of property most strenuously object to these proposals. Under the bill, no less than £600 a-year is proposed to be levied on the inhabitants of the town for the construction of these new waterworks.

Mr. RICKARDS: What is the local government of Newry at present?

Manning: It is under the Towns Improvement (Ireland) Act, 1854. The owners signing this petition are in the proportion of 90, to 244 ratepayers. Nominally this bill is promoted by the Commissioners, but really none of them have affixed their names to it.

O'Hara (for promoters): It is the bill of the trustees of the Besbrook Mills Company, not the Commissioners: the Commissioners have petitioned against the bill.

Manning: The *Sheffield Corporation Water Bill, 1870: Petition of Owners, Lessees and Occupiers* (2 Cliff. & Steph. 54), is on all-fours with this case. The *locus standi* of such of those petitioners as were owners of property was allowed. I shall be satisfied with the same decision.

Mr. ADAIR: How do they describe themselves in the petition; do they state their residences and property?

Manning: Yes; I am prepared to give evidence upon that. The bill, among other things, will subject us to weighing tolls, from which we are now free. I read section 22, to show that "owners" are not represented by the Improvement Commissioners. The words "immediate lessor" are used, which mean a ratepayer—not an owner. This, however, is not a bill promoted by the Commissioners, so the question of representation does not arise.

The **CHAIRMAN**: Does the bill impose rates on owners as distinct from occupiers?

Manning: The rates are imposed on all rateable property within the town. The property of the owners, consequently, is depreciated by the amount of the rate necessarily imposed for the construction of waterworks.

Mr. ADAIR: By section 42, I perceive that the rate is to be levied first upon all occupiers. In the case, however, of uninhabited houses, it is to be levied on the owners of those houses?

O'Hara (in reply): The petition of the cesspayers of the county of Armagh is from a very small fraction of the ratepayers of that county, and the Court will be slow to give to 45 persons, out of several thousands, the right to be heard in the name of the cesspayer. They do not come here as representatives of any public meeting, or as exponents of the general feeling of the county; they are too small a fraction of the cesspayers for Parliament to notice their petition.

The **CHAIRMAN**: What is the minimum rental upon which county cess is levied?

O'Hara: It goes down to any figure, however small. The petitioners have no right to come here; the Grand Jury is the proper body to represent them. The cesspayers of the county of Down in the same way, petitioned through the same agent; but subsequently, no doubt, were advised that they had better induce the Grand Jury to petition, and the Grand Jury accordingly did so. No attempt has been made to argue the *locus standi* of the individual cesspayers of the county of Down; but the Grand Jury will be heard as a matter of course.

Mr. RICKARDS: Is the petition of the Grand Jury agreed on at the assizes?

O'Hara: Yes. The time for petitioning had expired before the Grand Jury met, but application was made to dispense with the S. O., and we acquiesced in that application.

Mr. ADAIR: Supposing the cesspayers of Armagh, in order to be within the S. O., lodged their petition before the Grand Jury for the county of Armagh met, what should you say to that?

O'Hara: The same course might have been adopted as in the case of the petition from the Grand Jury of Down, who afterwards did petition in due form.

Mr. ADAIR: You would argue that the Grand Jury of Armagh do not entertain the same view as the Grand Jury of Down, or as the cesspayers of Armagh who signed the petition?

O'Hara: Quite so.

(The *Solicitor* to the petitioners said the two Grand Juries had met, and arranged that the Grand Jury of Down should represent both counties.)

O'Hara: I could not have a stronger argument in support of my contention that these individual cesspayers have no right to be heard. It is not alleged that any liability to taxation arises, in consequence of their occupation of premises in baronies abutting on the town of Newry, for they may be scattered all over the county. The case cited is inappropriate. As to the owners and occupiers, the body properly constituted for the purpose of

representing them has petitioned, and will be heard. Of these 244 persons we are told that 90 are owners and "immediate lessors" of the premises. The Towns Improvement (Ireland) Act, 1854, differs from English Acts in this; that it affords sufficient representation to owners of property resident in a district. The number of ratepayers in the town of Newry is 2,381. The *Northampton Markets and Fairs Bill* (2 Cliff. and Steph. 6) is in point.

Mr. RICKARDS: That was a bill brought in by the corporation; this is not the case of a bill promoted by the town of Newry, we are told?

O'Hara: No; but, in a similar way, the petitioners are represented by the Commissioners, who oppose the bill. There is not from beginning to end a single allegation of individual grievance. All the points raised are as to matters on which the petitioners would be represented by the Commissioners.

Mr. ADAIR: You contend that the owners and occupiers, ratepayers and inhabitants of Newry, are represented by the opposing Commissioners of Newry; and that their interests are as carefully guarded, as those of the cesspayers of Armagh and Down are by the intervention of the Grand Jury of Down as opponents?

O'Hara: That is my contention. Moreover, ratepayers cannot be heard apart from the body representing them. (2 Cliff. & Steph. 72.)

Mr. ADAIR: What is the population of Newry?

O'Hara: Fifteen thousand. A meeting was called, and 14 persons attended; the meeting, therefore, was abortive. After doing everything they could, by advertisement, to obtain a representation of all the dissatisfied ratepayers, they now come with 244 signatures to a petition.

Mr. ADAIR: Was the petition of the Commissioners of Newry lodged within sufficient time to comply with the S. O.?

O'Hara: Certainly. It was lodged in consequence of the requisition of the ratepayers.

Manning: They do not petition against the clause that we object to, and we have no guarantee that they will carry it on. They have entered into this improvident purchase, and they ask that it may be confirmed. The owners and ratepayers signing the petition represent two-thirds of the rateable value of Newry.

O'Hara dissented.

The CHAIRMAN: They do not so allege. (After consultation.) The *locus standi* of the cesspayers of Armagh is *Disallowed*. The *locus standi* of owners, occupiers, and ratepayers of Newry is *Allowed*.

Agent for Bill, *Bell*.

Agent for Petitioners, *Manning*.

BELFAST HARBOUR BILL.

12th May, 1871.—(Before Sir T. E. COLEBROOKE M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of JOHN REA.

Practice—Adjournment—Notice of Application for.

A petitioner applied for an adjournment of the hearing, on the ground that expense and inconvenience would thereby be saved to himself. It appeared that the promoters had only that morning received notice of the application, that the Committee on the bill had already met, and that no previous notice had been given of any intention to ask for an adjournment:

The Court refused the application.

(*Per Cur.*) It is necessary that the Court should dispose of cases in time to enable the promoters of bills to know what they have to meet, before going into Committee.

Cruse, Parliamentary Agent (for petitioner) stated that Mr. Rea had instructed him by letter to apply for a week's postponement, the other bills in the group preceding the Belfast bill being likely to occupy that time, and Mr. Rea desiring to avoid the inconvenience and loss of coming to London twice over.

Granville Somerset, Q.C. (for promoters) objected to any postponement; and stated that the promoters had only that morning been informed of the petitioner's intention to apply for an adjournment.

Mr. RICKARDS: It is necessary that the Court should dispose of cases of *locus standi* in time to enable the promoters of bills to know what they have to meet before going into Committee; and it would be inconvenient that the hearing of questions of *locus standi* should be postponed till the bill is ready for Committee. Here the Committee has already met, and we cannot foresee when the case will come on. If Mr. Rea had given notice of his intention to apply for an adjournment, the case might have been different.

Application *Refused*.

Agents for Bill, *Sherwood & Co.*

Agents for Petitioner, *Cruse & Bigg*.

SOUTH ESSEX ESTUARY AND RECLAMATION BILL.

15th May, 1871.—(Before Mr. WYNN, M.P., Chairman; Sir John DUCKWORTH; and Mr. RICKARDS.)

Petitions of (1) JOHN PAGE (of Coney Hall);
(2) JOHN PAGE (of Mayland).

Reclamation Bill—Revival of Powers—Court of Chancery—Agreements—Landowners—Compulsory taking—Vesting by Execution of Works—Foreshore—Title, assertion of—How to be Disputed—Evidence—Practice.

A company, to whom powers had been granted for the reclamation of portions of the sea-shore, was wound up in Chancery and the undertaking sold by the official liquidator; the object of the purchasers being to form a new company, in whose hands the former powers should be revived and extended. The bill for carrying out these purposes was opposed by two landowners, whose property lay within the area of operations. The powers of the old company had been of two kinds: to purchase lands within the sea-wall, and to execute works of reclamation beyond the sea-wall, the land so reclaimed vesting immediately in the company. The power of purchase by the company had expired, but that of acquiring land by the execution of works had still some months to run. The lands owned by the petitioners had admittedly been purchased by them since the first Act incorporating the company was passed. The promoters contended that the petitioners were entitled at most to a clause saving their rights:

Held, however, that they were entitled to a general *locus standi*.

(*Per Cur.*) A petitioner cannot give himself a *locus standi* merely by asserting that he is a landowner. If the allegation be disputed, *prima facie* evidence of ownership must be adduced.

This was a bill "for giving effect to an agreement authorised by the High Court of Chancery in relation to the undertaking of the South Essex Estuary and Reclamation company, and for enabling the transferees of that company to establish and maintain an oyster fishery."

By the South Essex Estuary and Reclamation Act, 1862, a company was incorporated, and

empowered to reclaim certain lands upon the coasts of Essex. The fee simple of the lands when reclaimed (except lands at the time of the passing of that Act belonging to any persons other than her Majesty), were vested in the company; and it was enacted that the company might, within seven years from 1852, purchase any of the lands protected by the exception. The works authorised by the Act were to be completed within 14 years, or the powers were to cease. By an Act passed in 1866, the powers of purchase granted to the South Essex company (other than those as to lands called the "Dengie Flats," which had been sold, under an Act of 1865, to the Metropolitan sewage company) were revived and extended for a period of three years, and their powers of construction were also continued for five years. The company reclaimed but a small tract, about 70 acres in extent, and in April, 1868, a winding-up order was made, under the Companies' Acts, 1862-7. The bill proposed to confirm an agreement for the sale of the undertaking, between Mr. Gibbons, the official liquidator, acting under the orders of the Vice-Chancellor, and Mr. Ferris, and to confer on the new company, to be formed by that gentleman, powers similar in all respects to those conferred by the Act of 1852 on the South Essex company. The petitioners, who were interested in the lands proposed to be reclaimed or purchased, opposed the grant of any such powers.

The *locus standi* of John Page (of Coney Hall) was objected to, because (1) no land or property of his was taken or used; (2) the lands alleged to have been purchased or reclaimed by him came into his possession subsequent and subject to the promoters' Acts of 1852 and 1866; (3) his title to any foreshore comprised in those Acts was disputed; (4) he had not any sufficient interest; (5) there was no ground for a hearing according to practice.

The *locus standi* of John Page (of Mayland) was objected to on similar grounds.

Sargood, Serjt. (for John Page, of Coney Hall): The compulsory powers of purchase have admittedly expired. No new plans are deposited, but the promoters go back to the old plans deposited in 1852, which include the estate purchased by my client in 1867, and which he has for many years occupied. They have served notice upon us in respect, among other things, of a new sea-wall which we, or our predecessors in title, built since 1852.

Pembroke Stephens (for promoters): It would be satisfactory to know what Mr. Page's title is to this piece of land?

Sargood: We assert the ownership in our petition; and I decline to produce the title.

Stephens: Assertion of ownership in a petition is only good until disputed in a formal manner; and in the objections we expressly traverse this statement of the petitioner.

Sargood: According to the ruling in the *Bradford* case (Cliff. and Steph. 41), questions of title are not matters on which evidence will be required.

Mr. RICKARDS: We cannot undertake to try a landowner's title to his estate; but, on the other hand, it would never do for a petitioner, by the

simple allegation that he was the owner of land about to be taken, to give himself a *locus standi* and for the promoters to be estopped from disputing that allegation. If so, any man could get a *locus standi* by the assertion of ownership of land. If disputed, we must have *prima facie* evidence, that he is the owner.

[Mr. Page was then examined as to the nature and extent of his property, and as to acts of ownership exercised by him.]

Sargood: If the Court are satisfied that this gentleman is the purchaser *bona fide*, and is in possession of the lands, they will not take on themselves the serious obligation of trying his right. They will never, at least, prevent him from being heard against powers sought at his expense; not even by the old company, but by a new and strange company, which is proposed to be created expressly for his injury.

Round (for John Page, of Mayland): Our lands adjoin those of the last witness, and our case is very similar. For purposes of *locus standi*, it is not necessary to prove absolute ownership: a tenancy at will is sufficient, if the tenant is in occupation. (*Caledonian Railway (Tay Ferries, &c.) Bill, 1870; 2 Cliff. and Steph. 37.*) But I will give evidence of presumptive ownership. [Mr. John Page, of Mayland, was then examined.] This is a defunct company, and these are totally new powers taken over my client's land.

Stephens: The powers of compulsory purchase have expired, no doubt; but the powers of acquiring the fee-simple of the land by works of embankment and reclamation still survive.

Round: They will cease this year. But the bill, I presume, would carry them on till 1885.

Pembroke Stephens (in reply): By the Acts of 1852 and 1866 certain lands were vested in the company; as the petitioners, whose property lies along the shore, must have known. The question is, whether the petitioners are at liberty—in the legal sense of the word—to squat upon those lands, and then come here and ask for a *locus standi* against a bill for the re-arrangement of the affairs of the company.

The CHAIRMAN: I hardly think the lands vested in the company; certain powers over lands were assigned to the company?

Stephens: We were incorporated to execute certain works, and the moment we did so the lands vested. There is no pretence for saying that we did not commence the works.

The CHAIRMAN: Do you mean that on your commencing the works these tracts of land vested in you?

Stephens: Not all of them. But those that vested did so silently, and without the exercise of compulsory powers. According to the evidence, one of these petitioners purchased his lands in 1859, and the other petitioner in 1867. What right had these gentlemen, or anybody else, to come upon these lands at all? They, or their predecessors in title, did so, knowing that they were liable to be dispossessed. They took the land with their eyes open; and they cannot now take advantage of their own wrong. No landowner, apparently, has yet succeeded in establishing his right to be heard as such, who began with a flaw in his title. And anything which has happened with regard

to the company, since they made their purchases, cannot cure the defect, whatever it may have been, in the original status of these petitioners. If they are landowners legally in possession, then they are protected by the 52nd clause of the bill, which says that we shall not purchase, without the consent of the owners, any lands within the existing sea-wall.

Mr. RICKARDS: That will not apply to the other clauses of the bill, which enable the company to acquire a title by executing works?

Stephens: Those works would necessarily be on the sea shore; we could not execute works upon their lands.

Mr. RICKARDS: By the 14th clause the company are empowered, for the purpose of reclamation, to "enter upon, take or use" such of the lands shown on the plan as they may deem necessary; and then, by the execution of those works, the lands vest in the company in fee-simple. Therefore, though the power to purchase land within the sea-wall can only be exercised by consent, the 14th and 15th clauses seem to grant compulsory powers over the land?

Stephens: Those clauses are "subject to the" other provisions of the bill.

Mr. RICKARDS: This power is general. It is to construct works anywhere?

Stephens: But works of reclamation would necessarily be beyond the sea-wall, and the petitioners put themselves out of court upon that point by producing the notice in which we recognise the sea-wall. They may be entitled to such a *locus standi* as will suffice for the protection of their own property, or to something in the nature of a saving clause; but, looking to the Acts already passed, they are not entitled to the general *locus* which is accorded to landowners in the first instance.

The *locus standi* of both the petitioners was Allowed.

Agent for Bill, W. Bell.

Agents for John Page (of Coney Hall), Wyatt & Hoskins.

Agents for John Page (of Mayland), Paine & Layton.

Petition of (3) METROPOLIS SEWAGE AND SOUTH ESSEX RECLAMATION COMPANY.

Reclamation of Land—Rival Companies—Statutory Purchase of Land—and Transfer of Rights—Practice—Petition, Indefinite Allegations in—Repeal of Clause in Act—Matters Arising Incidentally—Limited locus standi.

Where a bill sought power to repeal a clause in an existing Act relating to another company, and this company petitioned, claiming and obtaining a limited *locus* against the repealing clause, "and so much of the preamble, as related thereto," the Court refused to

extend the right of the petitioners to "matters arising incidentally out of the repeal" of the clause.

The petitioners, under their Act of 1865, purchased from the South Essex company, for the sum of £5,000, portions of the lands allotted to that company by their original Act of 1852; and clause 50 of the Act of 1865 also provided, in certain events, for the transfer to the Metropolitan sewage company of other rights and property of the South Essex company. By section 67 of the bill, the promoters sought to repeal Clause 50 of the Act of 1865, except so much thereof as related to the lands purchased for the sum of £5,000.

The notices of objection were of a technical character, embodying the construction put by the parties respectively upon the Acts affecting the two companies.

Rees, Parliamentary Agent (for petitioners): I am content to take a *locus standi* against the repeal of section 50, and so much of the preamble as relates thereto.

Pembroke Stephens (for promoters): We do not object to a *locus standi* so limited.

Rees: Then why have I been brought here?

Stephens: The petition alleges that "the preamble is incapable of proof;" and complains of "divers clauses and provisions" contained in the bill, and that other necessary provisions are omitted. But those are naked assertions, unaccompanied by any allegations in detail. We object to indefinite expressions of this kind, which may be read very widely hereafter.

Rees: Our *locus standi* ought also to be granted "as to matters arising incidentally out of the repeal of section 50."

Stephens: That claim is not supported by the petition.

The CHAIRMAN: The *locus standi* of the petitioners is *Allowed* against clause 50, and so much of the preamble as relates thereto.

Agents for Petitioners, *Dorington & Co.*

LONDON STREET TRAMWAYS (KENSINGTON, WESTMINSTER, AND CITY LINES) BILL.

5th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of THE METROPOLITAN RAILWAY COMPANY.

Tramways—Underground Railway—Competition—Structural Injury—Frontagers—S. O. as to—Access to Stations—House, shop, or warehouse—Booking-office—Public policy of Tramways—Reasons against, in Petition—Frontagers

not precluded from urging—Form of words limiting locus standi—Practice.

In a petition against a tramway bill it is not necessary to use the very words of the S. O. and allegations in the petition of frontagers are not rigidly construed. A booking-office is within the meaning of the S. O.; and an allegation of apprehended interference by the proposed tramway with access to stations of an underground railway company, will suffice to give a limited *locus standi*, such interference being substantially an injurious affecting of the petitioners "in the use or enjoyment of their premises, or in the conduct of their trade or business."

General allegations in a petition against the policy of constructing tramways in crowded thoroughfares, or against allowing to a tramway company a partial control over public streets, are not material to the issue before the Committee on the bill, the public Act respecting tramways having sanctioned the principle of such construction. Nevertheless, in the case of a railway company whose petition raised those points of public policy, the Court refused to limit the *locus standi*, in terms, to the question of frontage and apprehended structural injury, but allowed the *locus standi*, except as to so much of the petition as related to competition.

The bill authorised the construction of a tramway from Kensington to Hyde Park Corner. The petitioners alleged that the tramway would be laid "in front of" their stations at Hammersmith and in the Kensington Road, and that "the interference, contemplated by the bill, with the access to" these stations would be injurious. They also raised the question of structural damage to the line from the making of the tramway, and urged, generally, that tramways should not be constructed and worked along and across crowded thoroughfares.

The *locus standi* of the petitioners was objected to, because (1) no lands of theirs were taken or used, or facilities affecting them acquired; (2) they were not owners or occupiers of any house, shop, or warehouse within the meaning of the S. O.; (3) the proposed tramways would not, as alleged, be laid down upon the surface of streets under which the Metropolitan railway was constructed, except at Kensington Road; (4) and the laying of tramways in this road, to which one of the petitioners' stations fronted, did not entitle them to be heard; (5) the construction of tramways over railways not belonging to, but worked by the petitioners, did not entitle them to be heard; (6) the Hammersmith Station belonged not to the petitioners, but to the Ham-

mersmith and City railway, and the Victoria, Blackfriars, and intermediate stations belonged to the Metropolitan district railway; (7) even if the petitioners were owners of the whole railway route between Blackfriars Bridge and Kensington and Hammersmith, there would not be any competition entitling them to be heard according to practice; and ownership of part of that route—though they might lease or work other parts of it—gave them no right to be heard; (8) they had no sufficient interest in the bill.

Hollway (for petitioners): Though the proposed tramway terminates at Hyde Park Corner, it is part of an extended scheme which competes with our system; and as this tramway passes in front of our station in Kensington High Street, we are entitled to an unlimited *locus standi* against the bill. (*North Metropolitan Tramways Bill; sup. 175.*)

Sargood, Serjt. (for promoters): The petitioners do not allege that they are frontagers in the terms of the S. O.; that the tramway will interfere with their stations; or that their trade or business can be or will be interfered with.

Mr. RICKARDS: The allegation in the petition must not be construed with extreme rigidity, and seems quite enough to constitute a complaint that, by passing in front of the stations, the tramway will interfere with the petitioners within the meaning of the S. O.?

Sargood: You must be satisfied that the bill contemplates something, which in your judgment will be an interference with the access to the stations. Now, what interference will be caused by our tramway, with the public access to the stations, beyond that interference which is caused by any private vehicle passing along the road?

Mr. RICKARDS: The S. O. assumes that the construction of a tramway along a road will interfere with the frontagers in the use or enjoyment of their premises, and a special *locus standi* is given to them on that account.

Sargood: A petitioner must be the owner of a "house, shop, or warehouse," and this booking-office is neither one nor the other. The S. O. itself excludes all persons who do not come within that description, and who do not expressly say that they will be injuriously affected in the way prescribed—i.e., in the use and enjoyment of their premises, or in the conduct of their trade or business. The case of the Metropolitan railway against the *London Street Tramways Bill* (2 Cliff. & Steph. 85) is in my favour.

Mr. RICKARDS (to *Hollway*): Will you be content with a *locus standi* limited to the terms of the S. O.?

Hollway: A *locus standi* so limited would exclude us from going into competition and structural damage. We ask to be allowed to raise before the Committee all such questions as in our judgment may induce the Committee to reject the bill.

The CHAIRMAN: We will not trouble counsel to reply on the case of competition. What we propose is that the petitioners should have a *locus standi*, except as to so much of the petition as relates to competition?

Sargood: I would rather the Court would say

definitely on what the *locus standi* should rest. In the petition, reasons of public policy are alleged against the construction of tramways, and these allegations would allow the petitioners to oppose our preamble. They deny that it is expedient that tramways should be constructed and worked along the crowded thoroughfares of London; and they also "deny that any modified property or control ought to be granted to a joint stock company in or over public streets."

Mr. RICKARDS: Those are not questions for the Committee on the bill; they are settled by the public Act relating to tramways?

Sargood: With these allegations in their petition they might claim to reopen the question. We have no objection to their *locus standi* as frontagers under the S. O.

Hollway: Our tunnel is very near the surface of the road which you traverse, and we ask for some provisions to secure us against interference with the structure.

Mr. RICKARDS: It is a more convenient course expressly to exclude competition, and give the petitioners a *locus standi* otherwise than on that ground.

Sargood: With submission, the petitioners having no claim to be heard, except as being injuriously affected in the use or enjoyment of their premises and in respect of structural injury, the more logical course would be to say "you shall be heard on those two points, and on those only." The grounds of *locus standi* should not be unnecessarily enlarged; promoters of bills should know precisely the points to which opposition will be directed, and upon which they must prepare themselves with evidence.

The CHAIRMAN: The *locus standi* of the Metropolitan railway company is *Allowed*, except as to so much of their petition as relates to competition.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Dyson & Co.*

METROPOLITAN AND ST. JOHN'S WOOD RAILWAY BILL.

2nd June, 1871.—(Before Sir T. E. COLEBROOKE, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petitions of (1) OWNERS, &c., ON THE LINE; (2) MADemoiselle TIETJENS.

Underground Railway—Heavy Traffic—Statutory Restrictions upon—Proposed Repeal of—Opposition by Owners, Lessees, and Occupiers—Land not taken for Purposes of Railway—Houses over and adjoining Tunnel—Vibration—Injury to Structure—Land's Clauses Consolidation Act, 1845—Brand v. Hammersmith, &c., Railway Company—Sale by Railway Company of surplus Land and Houses—Implied

contract by Vendors—To run Passenger Trains only — Inhabitants of District injuriously affected—S. O. as to.

An Act, obtained in 1864, authorised the construction of an underground metropolitan line, but (by clause 88) restricted the traffic to passenger trains. The line was constructed, and the company sold the surplus land and houses situated over the course of the tunnel, the Act of 1864 being referred to in the conditions of sale as constituting the title of the company to sell. The company now promoted a bill which, among other objects, sought to remove the restriction on goods traffic. The bill was opposed by two sets of petitioners: (1) by 250 owners, lessees, and occupiers, along the line, residing between the two termini, and claiming to be inhabitants of a district injuriously affected; and (2) by a purchaser of houses from the company, who complained that she had bought them on the faith of the restriction, and had thereby been induced to pay a higher price than the property would otherwise have produced. Some of the 250 petitioners had also purchased houses from the railway company under the same circumstances, and both sets complained that, as owners, their property would be injured by the increased vibration, and that, as occupiers, they would be prejudicially affected in the enjoyment of their premises. The case of *Brand v. Hammersmith, &c., railway company* (4 L. R., App. Cas. 170) was cited to show that the petitioners would have no right to compensation under the Lands Clauses Act, 1845, section 68, in case of injury to their property from vibration, after the running of goods trains and heavy traffic had been authorised by Parliament:

Held, that both sets of petitioners had a limited *locus standi* against the clause proposing to repeal the restriction; though no land of theirs was taken for the purposes of the line.

The bill proposed (*inter alia*) to repeal (by clause 17) section 88 of the Metropolitan and St. John's Wood Railway Act, 1864, which provided that the company should not take on their line any heavy goods.

The petition was that of "owners, lessees, and occupiers of houses in the district traversed by the Metropolitan and St. John's Wood rail-

way," and was signed by 250 persons who alleged that they were at present seriously inconvenienced and disturbed, and the property of many of them injured by the vibration caused by the existing passenger trains, but that the conveyance of heavy goods along the line would be positively dangerous to the buildings, and so disturbing, by increased noise, as to render it impossible to occupy with comfort the houses along the line of railway. The petitioners further complained that the attempt now made to set aside the provisions of the Act of 1864 was in violation of the contract upon which that Act was obtained, and in reliance upon which many of the petitioners had purchased from the company the freehold, or had taken leases of their present houses.

Mdlle. Tietjens alleged that she was the purchaser from the company of a freehold house, 51, Finchley Road, now occupied by her, and of a leasehold house, No. 53, in the same road, both forming a part of the superfluous lands of the company; that in the printed conditions of sale it was stated that a copy of the Act of 1864 (enacting among other things that the company should not carry heavy goods), would be produced at the time of sale; that the vibration produced by the running of passenger trains had materially affected the structure of these houses; that far more serious injury would be caused if heavy goods' traffic were authorised; that the noise occasioned thereby, more especially in the night time, would be such a nuisance as very much to depreciate the value of these houses; and that the company, having sold these houses on the faith of the Act of 1864, ought not now to be allowed to vary the conditions of sale.

The *locus standi* of Owners, &c., on the line, was objected to, because (1) the petitioners are not owners, lessees, or occupiers of any property proposed to be taken by the bill; (2) section 88 of the Act of 1864, was not inserted at the instance of the petitioners or of any other landowner or person, but solely at the instance of the company and for their benefit; (3) the petitioners allege no ground, and have no interest which entitles them to be heard consistently with practice.

The objections to *Mademoiselle Tietjens* were to the same effect.

Smith (solicitor, for Owners, &c.): The district we represent is clearly defined in the bill as extending from one terminus of the railway to the other; and the petition originated at a public meeting, which was largely attended by residents. The number of houses in the district traversed by the railway is close upon 300, and the petition is signed by 250 persons, almost all residents along the line. We are therefore inhabitants of a district injuriously affected by the bill, and are within the S. O.

Bidder (for promoters): The petition does not suggest that the petitioners represent a district injuriously affected by the bill, or that the district will be so affected.

Smith: The district is that traversed by the line, and we petition expressly as inhabitants of that district. In the *Bray Improvement Bill* (Smeth. 174) the ratepayers were excluded, because only 56 out of 1,200 inhabitants peti-

tioned. Here the petitioners represent eight-tenths of the residents along the line.

Bidder: The petitioners do not say that they appear in a representative character. They petition as owners, lessees, and occupiers, in respect of certain injuries which they apprehend they themselves will sustain.

Mr. RICKARDS: They do not represent any particular community, but they are a number of individuals whose interests will be injuriously affected by the bill?

Smith: We are the whole community in fact; that is to say, we reside along the line, a distance of two miles.

Mr. RICKARDS: You may call them the frontagers of the line?

Smith: Yes. In the case of the *Liverpool Tramways Bill* (Cliff. & Steph. 142), 13,600 ratepayers were allowed a *locus standi*, though the objection was raised that they were represented by the corporation; the proportion of 13,600 to the whole number of ratepayers in Liverpool, being much smaller than the 250 here to the whole number of inhabitants along the line.

Sir JOHN DUCKWORTH: Do not you allege that these gentlemen are individually injured?

Smith: Yes; I am one of them.

Sir JOHN DUCKWORTH: That is a much stronger ground.

Mr. RICKARDS: It is the same question, as if one individual had petitioned and alleged that his house would be rendered unsafe, by reason of the proximity of the line.

The CHAIRMAN: At what distance is your house from the line?

Smith: It is about 25 feet outside my front garden.

Mr. RICKARDS: Are there many others in the same situation?

Smith: Many unfortunately worse; all as bad. We say that the repeal of clause 88 in the Act of 1864 will specially affect those who have purchased property from the railway company; and, as to all the other petitioners, that the conveyance of heavy goods will be positively dangerous to the structure of the buildings, and by the increased noise will render it impossible with comfort to occupy the houses.

Sir JOHN DUCKWORTH: Owing to increased vibration you mean?

Smith: Yes. The company allege that the clause in the Act of 1864 was inserted solely at the instance of the company, and for their benefit. Even admitting that to be so, the surplus land and houses were bought from the company on the faith of that clause, which, in fact, formed part of the contract with the purchasers, and enabled the company to obtain a higher price than would otherwise have been paid. I buy a freehold house, which I know at the time to be subjected to a certain inconvenience, the vendors guaranteeing that there shall be no greater inconvenience; and if the vendor obtains power from Parliament to increase that inconvenience, the value of the house is obviously depreciated. Unfortunately, it is now settled law that a legalised nuisance cannot be made the subject of an action, and that no compensation can be claimed under the *Lands Clauses Act* for injury to structure by passing

trains on an authorised railway, or for interference with personal comfort. (*Brand v. Hammersmith Railway Company*, 4 L. R., App. Cases, 171.) The effect of this decision is, that if you apprehend any injury from a railway, you must come to Parliament before the Act is obtained. At present, we are shaken in our beds, if we are lying in them, from six a.m. till midnight, and it is now proposed to deprive us of the quiet interval by running heavy goods' trains during the night.

J. Shireess Will (for Mdlle. Tietjens): My client's case is similar to that just stated. She claims to be heard as an owner and occupier of houses which will be injured by the increased vibration, and also on the ground, if not of a distinct, at least of an implied, contract with the railway company, from whom she bought this property, that the traffic on the line should be passenger traffic only. The company obtained a higher price for their superfluous land by reason of the then existing restriction upon their traffic; now, having sold the land, they desire to remove the restriction. We should therefore be heard against the bill. One of the houses is over the railway which runs in a tunnel; the other house is eight or ten feet distant. Even now the structure suffers from the vibration, there being a crack in one of them in which a man might put his hand; and if this vibration is increased, the houses will become untenable. Since the decision of the House of Lords in *Brand's* case, there will be a wrong without a remedy, if we are shut out; and the wrong here will be to a person who has bought property from the promoters of the bill on the faith of conditions which they now seek to alter. Against the *East Gloucestershire Railway Bill* (*May's Parliamentary Practice*, 6th ed., 693) owners and occupiers of houses were heard, who complained that their property would be injured and shaken by the proposed line, though untouched by it, and they obtained protective clauses. In the case of the *Skinner's Company* against the *South Eastern Railway Bill* (12 L. T. R. (N.S.) 98), and the *Loughborough Park Chapel* case (Cliff. & Steph. 45), the petitioners were excluded, because the promoters shewed that they would obtain compensation under section 68 of the *Lands Clauses Act*; but that was before the decision of the House of Lords in *Brand's* case. No S. O. binds the Referees to give a *locus standi* only in cases where land is taken; and they have granted a *locus standi* to petitioners whose land has not been taken, but has been prejudicially affected. (*Smeth. 22*); (*North Metropolitan Tramways Bill: Petition of Sir T. E. Colebrooke, M.P.*, 2 Cliff. & Steph. 90.) So in cases where it is proposed to subject a certain district to increased taxation, owners of property have been allowed to appear, though their land was not taken.

Bidder (for promoters): The conditions of sale referred to the Act of 1864, because the company's title to sell the land arose out of that Act, but there is not a word in the conditions as to clause 88.

Mr. RICKARDS: The clause forms part of the Act.

Bidder: There was no guarantee that the

company would never run any goods trains; and the injury apprehended here is of the slightest description. The *East Gloucestershire* case occurred nine years ago, before the establishment of this Court; since then the current of decisions has run the other way, and the rule is that individuals petitioning, in respect of their own private interests, their property not being taken, and being merely injuriously affected, are not entitled to a *locus standi*. (Cliff. & Steph. *Practice* 39.) There is a marked distinction between the case of inhabitants of a district, who allege that they are injuriously affected, and the case of individuals making the same allegation. Inhabitants petitioning as a body, and representing a district injuriously affected, are entitled to be heard under the S. O., but individuals injuriously affected have no such claim. The *Loughborough Park Chapel* case, already cited, was analogous to this. Two railways existed on two sides of the chapel. It was proposed to make a third line nearer the chapel, causing, as was apprehended, greater vibration and greater injury, just as is feared in this case through running heavy goods trains.

Mr. RICKARDS: The injury there might have been the disturbance of the services, and not any physical injury by vibration?

Bidder: The petition alleged both.

Mr. RICKARDS: The value of the chapel, as property, might be very much affected. That would be different to such an injury as is suggested here, viz., physical injury to structure.

Bidder: In principle the thing is the same. They are both an injurious affecting, more or less, and they are both in the nature of indirect injury, as distinguished from actual interference with the property itself. If the petitioners were injuriously affected in that case, they had a remedy, and the same argument applies now. Where property is not taken but is injuriously affected, the Legislature has made an express provision in the 68th section of the Lands Clauses Act for compensation; but then, it is said, that the case of *Brand v. The Hammersmith Railway* has decided that inconvenience or injury arising from vibration in working a railway is not within section 68. That is quite true; but what follows? That the Legislature has said "we draw the line at injurious affecting from the construction of the railway, and we do not think fit to extend the right to compensation to those remote and indirect cases where a person may allege that he is injuriously affected by vibration." These petitioners really claim a *locus standi* in order that they may ask the Committee to reverse the general law. This is a case not of a new injurious affecting, but, at the utmost, of an apprehended increase of an existing injurious affecting, and the Court would be running counter to previous decisions if, in this case, they granted a *locus standi* to the petitioners.

Mr. RICKARDS: There are some cases in which bills have proposed to confer an increased power of rating landed property, and on the ground that such property would be made less valuable on account of the greater taxation, a *locus standi* has been given to the landowner. Is there any case you can point to, in which,

where it appeared that the property of the landowner, though not taken, would be diminished in value by the operation of the bill, there being no legal remedy, the Referees have refused the *locus standi*?

Bidder: In the *Fareham and Netley* case (Smeth. 100), the landowner could not claim compensation under the Lands Clauses Consolidation Act, but his *locus standi* was disallowed.

Mr. RICKARDS: That was apparently a case of interference with the picturesqueness of the property?

Bidder: And loss of anchorage. As to the case of the *Skinners' Company* that was an interference with ancient lights, and it is doubtful whether the petitioners could have obtained compensation under section 68 of the Lands Clauses Act.

Mr. RICKARDS: It seems to have been argued that they had a remedy under that section?

Bidder: In this case it is the minimum of injurious affecting.

Mr. RICKARDS: We do not know what the extent of this goods traffic will be, but supposing it to be a large goods traffic, it must very greatly increase the vibration. What traffic will it be?

Will: The Midland goods and coal traffic.

Bidder: It would be local goods traffic. Clause 88 in the Act of 1864, was inserted for this reason:—The line, as originally laid down, had no junctions with the other lines which it met. There were merely exchange stations and, therefore, there were no conveniences for transmitting heavy goods traffic; if there had not been some such restrictive clause, the company might have been compelled under Mr. Cardwell's Act to carry heavy traffic, notwithstanding the absence of the proper conveniences. The extent of injury here is only the amount of vibration caused by a coal truck as compared with that caused by a passenger carriage. The Legislature, whilst providing for other cases of injurious affecting, has thought fit to exclude this description from compensation, on the ground that it is too remote; and will the Court depart from its general rule by giving a *locus standi* to these petitioners? If so, the Court will really give the petitioners a *locus standi* in order that they may patch up, in their particular case, what they consider to be the defects of the general law.

The CHAIRMAN: The *locus standi* of both the petitioners is *Allowed* against clause 17.

Agents for Bill, *Wyatt & Hoskins*.

Agents for Owners, &c., *Holmes, Anton, Greig, & White*.

Agent for Mdlle. *Tietjens, Walmisley*.

PADDINGTON, ST. JOHN'S WOOD, AND
HOLBORN STREET TRAMWAYS BILL.

5th June, 1871.—(Before Mr. ST. AUBYN, M.P.,
Chairman; Mr. BONHAM-CARTER; and Mr.
RICKARDS.)

Petitions of (1) THE METROPOLITAN AND ST.
JOHN'S WOOD RAILWAY COMPANY; (2) THE
METROPOLITAN RAILWAY COMPANY.

*Tramways—Underground Railway—Structural
injury to—Frontagers, definition of—S. O. 135
—Access to Stations—Use and enjoyment of—
Injurious affecting by Tramways—Sufficiency
of allegations as to—Competition—Identical
Routes—Street Omnibuses.*

A tramway bill was opposed by two underground railway companies claiming to be frontagers under the S. O., and also on the ground of competition, one of the petitioners further alleging apprehended structural injury from the laying of the tramway in the street immediately above its line. The promoters traversed the allegation that these petitioners were frontagers within the meaning of the S. O., asserting that although they had three stations in the line of road to be traversed by the tramway, the entrance to each of those stations lay in a side street or road, and so did not "front" the tramway:

Held, upon this state of facts, that both the petitioning companies were entitled to a limited *locus standi*, the S. O. not using the word "frontagers," and being silent as to the position of the entrance to premises situated in the line of the tramway. The Court, however, refused to admit the claim to be heard on the ground of competition, though the course of the proposed tramway was in one instance coincident with that of the railway.

A *locus standi* allowed to frontagers does not, as in the case of landowners, give them a right to oppose the preamble generally; and the Court refused to be governed by a previous decision which was assumed to have established this wider privilege. [*Ante* 175.]

(*Per Cur.*) If petitioners against a tramway bill "state that which amounts to an injurious affecting of their premises, they bring themselves within the S. O., though they do not use the words of the S. O."

This was a tramway bill, and both petitioners alleged that certain of the proposed tramways would be laid on the surface of streets under which the Metropolitan railway or the Metropolitan and St. John's Wood railway was constructed; that the tramways would likewise interfere with the access to certain of their stations, in front of which the tramways were to be laid down; and they objected to the construction of the tramways on these grounds, as well as on the ground of competition. The St. John's Wood railway company were further apprehensive of injury to their line from the construction of the tramway in the line of streets immediately over their tunnel.

The *locus standi* of the St. John's Wood company was objected to, because (1) the bill contains no provisions for taking or using any part of the lands, &c., of the petitioners; (2) they are not owners or occupiers of any house, shop, or warehouse within the meaning of the S. O. (3) the fact that tramways are intended to be laid along streets and roads under which the railway has been constructed, does not entitle the petitioners to be heard; they are not owners of, and do not repair any of such roads, nor will any of the works under the bill interfere with the railway and works of petitioners; (4) save in so far as tramways are to be laid along public roads in front of or near to stations of the petitioners, the access to such stations will be in no way interfered with or affected, and the laying of such tramways does not entitle the petitioners to be heard; (5) no competition will arise under the bill entitling the petitioners to be heard according to practice; (6) they have no sufficient interest.

The *locus standi* of the Metropolitan railway company was objected to on similar grounds.

Bidder (for the St. John's Wood railway company): My case is identical with that of the Great Eastern company against the North Metropolitan tramways bill (*Sup.* 175), where as frontagers, you gave my clients a general *locus standi* against the bill. There is no doubt here that we are frontagers; we also say there is a risk of structural injury, owing to the tramway passing over our railway; and the competition is as direct as can possibly be conceived. If, however, our right as frontagers is admitted, the case I have just mentioned shows that it will be unnecessary for me to go into the question of competition.

Mr. RICKARDS (after consulting the CHAIRMAN OF COMMITTEES): We did not intend, in the North Metropolitan case, to give you a *locus standi* on the ground of competition. We will hear you now upon that question?

Sargood (for promoters): We deny that these petitioners are frontagers, or that our tramway runs in front of any of their booking-offices within the meaning of the S. O., They are in a different street altogether.

[A witness was called, who stated, in cross-examination, that the Swiss Cottage station of the petitioners was situated in Finchley Road, along which the proposed tramway was to be laid, but the entrance to this station was in the Belsize Road, not in the Finchley Road. At the Marlboro' Road station, the entrance was

in the Finchley Road, and partly in the Queen's Road; the station being on the slant, fronting to both roads. The St. John's Wood Road station had its entrance in the St. John's Wood Road, and opposite the Finchley road.]

Mr. RICKARDS: Does the word "frontage" mean that the front of the house must abut upon the road?

Sargood: Yes.

Mr. RICKARDS: And if the side or the back of a man's premises fronts upon the road, that man is not a frontager?

Sargood: No. "Frontage" means that part of a man's house or premises opposite to our tramway in or through which you have the ordinary access. If you have a house to which the access is in Belsize Road, but the side of the house—a dead wall, or a wall with windows in it—is in the Finchley Road, that is not frontage.

Bidder: The words of the S. O. are "owner, or occupier, of any house, shop, or warehouse, in any street through which it is proposed to construct any tramway."

Mr. RICKARDS: The word "frontage" does not occur in the S. O. There may be a side entrance to a house, shop, or warehouse, and yet that may be a house, shop, or warehouse in the street?

The CHAIRMAN: Take, for instance, the Geological Museum in Jermyn Street. The whole face of the building is in Piccadilly, though there is no entrance in Piccadilly. Would you say the Museum has not a frontage in Piccadilly?

Sargood: It is not a house, within the meaning of the S. O., the owner of which could say that a tramway running along Piccadilly would interfere with the access to his premises, which is in Jermyn Street only.

Mr. BONHAM-CARTER: The words of the S. O. are "use or enjoyment of his premises?"

Sargood: The petitioners do not allege that the tramway interferes with the use or enjoyment of their premises, but with the access.

Mr. RICKARDS: Interference with the access would certainly affect the petitioners injuriously in the use of their premises?

Sargood: There is no allegation that the tramway will injuriously affect the petitioners.

Mr. RICKARDS: If the petitioners state that which amounts to an injurious affecting of their premises, they bring themselves within the S. O., though they do not use the words of the S. O. If there is a house facing a street, but having an entrance not in that street, but round the corner, it is quite possible that the access to that entrance may be interfered with by the passing of the tram carriages?

Sargood: The S. O. says that any person "who alleges in any petition against a private bill or Provisional Order that the construction or use of the tramway proposed to be authorised thereby will injuriously affect him in the use or enjoyment of his premises, or in the conduct of his trade or business, shall be entitled to be heard." The petitioners avoid making these allegations, but in their place make another, which we traverse, viz., that we interfere with the access to their station.

Bidder: The S. O. requires two things—a fact and an allegation. The fact is, that the petitioner shall be the "owner or occupier of any

house, shop, or warehouse in any street through which it is proposed to construct any tramway;" and the allegation required is, that the petitioner will be injuriously affected "in the use or enjoyment of his premises, or in the conduct of his trade or business." There is not a word in it about doors, or which way the door shall open. Our station is in the street through which the tramway proposes to pass, and that is the material point which brings us within the S. O. The petition contains an allegation equivalent to the requirement of the S. O.

Sargood: It says "interfere with," not "injuriously affect."

Bidder: Whatever interferes with our access must necessarily affect us in the conduct of our business. As to the other grounds upon which we claim a general *locus standi*, we allege that the tramway cannot be constructed over our line without injury to our railway. That points to structural injury to the crown of our tunnel and to the railway itself. Upon that allegation we are clearly entitled to a *locus standi*, apart from the S. O. This is the strongest possible case of competition that could be conceived between a railway and tramway, the competition being, not for a part of our system, but for the whole length of our line; from its starting point to its terminus, the tramway will be coincident with our railway. The only difference is that one will be underneath the street and the other on the street; and our railway has been expressly authorised and constructed for the purpose of carrying exactly the same description of traffic as the tramway.

Mr. RICKARDS: Omnibuses ran on the same route previously to the construction of the railway?

Bidder: Yes; but here Parliament is asked to sanction a tramway system in opposition to our authorised line, constructed at an enormous expense with a view to relieve the traffic of the streets.

Sargood: In other cases the Court has decided against the claim of railway companies to be heard upon tramway bills on the ground of competition. (2 Cliff. & Steph. 82-9.) There is nothing to distinguish this case. If any competition is created, it is between the tramways and the omnibuses. If a more commodious omnibus were placed upon the road, the underground railway would have no right to complain; and the laying down of rails for the omnibus to run upon makes no difference in the principle. As to the question of frontage, the S. O. was intended to meet the case of people, the front of whose premises was on the line of road to be traversed by the tramway. But the frontages of the petitioners are, in each case, at angles more or less acute with the line of road along which the tramway will pass, and it is idle to say that the tramway cars can in any way interfere with the access to the stations of the petitioners. On the contrary, if the tramways run the omnibuses off the road, the stations of the petitioners will be more accessible than they are now.

The CHAIRMAN (after deliberation): The *locus standi* of the Metropolitan and St. John's Wood railway company is *Allowed*, except as to so much of their petition as relates to competition.

Sargood (for promoters): I am willing to concede to the Metropolitan railway company a *locus standi* limited to the S. O.

Hollway (for Metropolitan railway company): If we have a case as frontagers, we are also entitled to appear generally against the preamble on the points raised in our petition; we are not to be cut down to an opposition on clauses, but are as much entitled to oppose a bill generally as a landowner would be.

Sargood: The S. O. expressly limits the *locus standi* of frontagers, who are to be heard "on such allegations" only. It never was intended that frontagers, by avoiding a specific allegation in the terms of the S. O., and putting their case in general language, should be allowed to oppose the whole preamble and to have an unlimited *locus standi* against the policy of running tramways in public thoroughfares.

The CHAIRMAN: The *locus standi* of the Metropolitan railway company is *Allowed*, except as to so much of their petition as relates to competition.

Agents for Bill, *Dorington & Co.*

Agents for both the petitioning companies, *Dyson & Co.*

PIER AND HARBOUR ORDERS CONFIRMATION No. 2 (REDCAR PIER) BILL.

2nd June, 1871.—(Before Sir T. E. COLEBROOKE, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS).

Petition of the COATHAM VICTORIA PIER COMPANY (LIMITED.)

Provisional Order—Promenade Pier—Deviation—In Works already authorised—Opposed by New Company—Rival undertakings—Alleged superiority of one of—Competition—Want of distinct Allegation as to—Towns closely adjoining—Board of Trade—Practice of.

A public bill to confirm various Provisional Orders of the Board of Trade, including two orders sanctioning promenade piers, which, when constructed, would be only 800 yards apart, and would belong to adjoining towns on the sea coast, was opposed, as to one of those orders, by the promoters of the rival scheme. The opposed pier, on a site slightly different from the present, had been sanctioned in 1866, and the powers for that purpose were unexhausted, though no effectual steps had been taken to carry them out. The petitioners now came forward for the first time with their plan; their petition, which was the only one against either Provisional Order, dwelling rather upon the advan-

tages of their own scheme, than upon any injury that would be inflicted on them by the scheme of the promoters:

Held, that the petitioners had no *locus standi*.

Semle: That it is the general practice of the Board of Trade, as regards Provisional Orders, "not to entertain objections arising out of competition, or out of opposition between local interests, where the parties are unwilling to abide by the decision" of that department.

This was a bill to confirm Provisional Orders of the Board of Trade relating, among others, to piers at Redcar and Coatham, towns on the coast, situated close together, like Hastings and St. Leonards. In 1866, a Provisional Order for a pier at Redcar was obtained, but the company never commenced operations, and the time for construction would expire in August, 1871. The Redcar pier company now applied for what they called a deviation, but substantially for powers to construct a new pier, 160 yards to the eastward of the former site. The Coatham pier company came forward, for the first time, with a rival scheme, their pier being only 800 yards distant from the new pier of the Redcar company, but, as they alleged, in a more suitable position, and more easily accessible from houses of modern date. The bill proposed to confirm both orders. The petition was on behalf of the Coatham pier company against the Redcar proposals.

The *locus standi* of the petitioners was objected to, because (1) no lands, houses, &c., of theirs were taken or used; (2) no right or interest was interfered with; (3) no sufficient ground of competition was shown or alleged; (4) the alteration proposed in the position of the work, authorised in 1866, was analogous to a deviation in an authorised line of railway and gave no right of opposition to the petitioners, who were a limited company seeking original powers for the construction of a pier elsewhere; (5) they were not entitled to be heard on any alleged ground of injury to the public interests; (6) the powers obtained in 1866 by the promoters to construct a pier at Redcar were still in existence, whereas the petitioners had no powers whatever; (7) no sufficient facts or reasons were shown, according to practice.

Shield (for petitioners): We have both been before the Board of Trade; they have allowed both orders to proceed, but they say that, on public grounds, if the practice of their Board had permitted them to make a selection, they would have chosen our pier.

The CHAIRMAN: Does Redcar object to Coatham, as much as Coatham does to Redcar?

Merewether, Q.C. (for Redcar pier company): No; we have not petitioned.

Shield: Our scheme has had the effect of reviving this old company; but they cannot carry out their new project under the old powers. Accordingly, there is also an application for the first time—in fact, a rival bill. The Board of Trade has made two reports, and it is in the

latest that they express an opinion favourable to our pier. But they add that, "having regard to their general practice not to entertain objections arising out of competition, or out of opposition between local interests, where the parties are unwilling to abide by their decision, they have made both orders," and include them in a confirming bill. We set out very fully in our petition the relative merits of these two schemes.

Mr. RICKARDS: Your petition does not seem to rely on the fact that Redcar pier will compete injuriously with your undertaking; but you say that you will take the wind out of the sails of the Redcar pier by the superior advantages you offer?

Shield: We shall, of course, be affected, as there will be another competitor for tolls. We do not say so expressly, but our petition rings with competition.

Mr. RICKARDS: The two Board of Trade reports, set out in the petition, do not seem very consistent. One of them says that the Board of Trade "are of opinion that there is no necessity for two promenade piers within 800 yards of each other." In the special report, however, dated 30th March, 1871, the Board say "they are of opinion, upon public grounds, that neither of the piers is objectionable, and if either were already made and open to the public, they would probably not refuse the application for the other scheme." Here, they appear to think, there is room for both?

Shield: The apparent inconsistency may be explained in this way—though the first impression is against a second pier, they can find nothing in it absolutely injurious to the public. The question of competition they leave to Parliament to decide. We are the only petitioners. There are no petitions against the Coatham scheme. Though these are distinct parishes, they are coterminous; and the lines of building continue without interruption.

Merewether, Q.C. (in reply): The argument addressed to the Court is based on the ground of competition, and upon that ground alone; whereas the petition throughout maintains that "there can be no competition between us, because ours is so superior a pier." We are content to accept that statement; but I never heard competition insisted on in such terms.

Locus standi Disallowed.

Agents for Bill, Marriott & Jordan.

Agents for Petitioners, Wyatt & Hoskins.

DORKING GAS BILL.

5th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petitions of (1) INHABITANTS OR RATEPAYERS OF DORKING; (2) INSPECTORS OF THE DORKING LIGHTING AND WATCHING DISTRICT.

Gas—Ratepayers—Inhabitants—Insufficient Representation of—Public Meeting, Absence of—Inspectors—Lighting and Watching Act, 1833—Limited powers conferred by—Power of Watch-

ing and Lighting portion of Parish only—Meaning of expressions:—"Local authority," "Injurious affect," &c.—S. O. 134 (Municipal Authorities & Inhabitants)—Vestry—Gas Company—Price of Gas—Illuminating Power—Increase of Capital.

A bill for incorporating an existing gas company to supply gas within the parish of Dorking was petitioned against (1) by 45 inhabitants or ratepayers, out of 9,000 in the parish; and (2) by a majority of the inspectors appointed for a portion of the parish, with limited powers, under the Lighting and Watching Act, 1833. It appeared that the inspectors had petitioned individually, and not as the result of a duly-constituted meeting of their body:

Held, that neither set of petitioners had a *locus standi*.

Semble: That a body whose jurisdiction is limited to one or two objects, though constituted and acting under statute, and though these objects may be akin to the purposes of the bill, will not be recognized as the "authority having the local management of" a town, for purposes of *locus standi*.

(*Per Cur.*) "The local management of a town is a different thing from the power of making contracts for the lighting of the town."

"The words 'injuriously affect' are generally understood to apply to some physical or material injury—either injury to trade, interference with drainage, or something of that kind." But not, apparently, to the price of gas in a town.

The bill was one "for incorporating the Dorking gas company, and for enabling them to supply gas within the parish of Dorking, in the county of Surrey, and for other purposes."

Against the bill, two petitions were presented—one signed by 45 inhabitants or ratepayers of Dorking, out of a total of 9,000; and the second by a majority of the inspectors of watching and lighting for that part of the parish of Dorking in which the provisions of the 3 and 4 Will. 4, cap. 90 (the Lighting and Watching Act, 1833) had been adopted, the Local Government Act not being in force within the district. The seven inspectors were also among those who signed in the former instance. Both petitions complained of the maximum price of gas, illuminating power, &c., proposed by the bill; but more particularly of the increase of the capital of the company, and, generally, of the pecuniary burdens which would be imposed upon the locality.

The *locus standi* of the inhabitants and ratepayers was objected to, because (1) no lands, &c., of theirs were taken, nor would they be

injuriously affected by the bill; (2) they did not represent the district, and the petition had not emanated from any public meeting; (3) their main objections were to matters affecting the interests of the shareholders and the internal management of the company; (4) this was a mere echo of the petition of the inspectors, and should their *locus standi* be allowed the inhabitants would be represented; (5) the petitioners had not opposed the bill in the House of Lords; (6) the petition was insufficiently signed, and the opposition was vexatious and uncalled for; (7) they could not appear according to practice.

The *locus standi* of the inspectors was objected to, because (1) They were not entitled to represent the inhabitants of the parish of Dorking (their duties only applying to a portion of the parish), and the district was not injuriously affected; (2) the alleged rights of the inspectors to enter into contracts for lighting the streets, roads, and places in their district with gas, and for furnishing lamps and other things necessary for that purpose, on which alleged rights alone they claimed to petition, were not affected, nor were any lands, rights, &c., of theirs taken; (3) the inspectors were not entitled to petition without the express authority of the vestry who annually appointed them; (4) the petition should have been authorised by a duly constituted meeting of the inspectors, instead of emanating from individual members of their body. (The remaining objections were similar to those taken in the case of the ratepayers.)

Round (for all the petitioners): I admit that the language of both petitions is very similar; but one petition covers the whole parish of Dorking, while the other merely extends to the town or lighting district. Accordingly, they cannot be treated as identical. The inspectors, who are appointed under the Lighting and Watching Act, do not claim to represent the inhabitants in their individual capacity, but as the only duly constituted local authority which exists for Dorking at present. It is a mistake to suppose that they are not entitled to petition without the express authority of the vestry; to show this I refer to clauses in the Act itself. They are, in fact, the local authority for this purpose.

The CHAIRMAN: If there were no inspectors, who would be the authority representing the parish?

Round: There would be no authority for lighting at all.

The CHAIRMAN: There would be the vestry?

Round: In the sense in which a vestry represents the wishes of the inhabitants generally, but they would not derive their authority under statute as the inspectors do here.

Mr. RICKARDS: What are the powers of the inspectors?

Pembroke Stephens (for promoters): They are correctly set out in the petition. "As such inspectors, your petitioners are empowered to enter into contracts with any company for lighting the streets, roads, and places in their district with gas, and for furnishing lamps and other things necessary for that purpose." I admit the accuracy of that description, but not that the petitioners are, in any sense, "the local authority."

Round: By section 45 it is not only a power

to put up lamps, but it is that they may "cause the same to be lighted with gas, oil, or otherwise, for such number of hours in every 24 hours, as they shall think necessary." The inspectors are not annually appointed by the vestry, for only a third of them go out annually by rotation. Their meeting, moreover, is under statutory authority, not under the common law, as in the case of vestries. They are in the position of trustees, having to look after the interests confided to them; and the petition is signed by a majority of their body.

Mr. RICKARDS: The short question is whether, being inspectors of lighting duly appointed, they are entitled to petition against a bill for providing gas. Under what S. O., or on what principle, do you ground their right to be heard?

Round: They are, within the meaning of the S. O. the authority having the local management of a town injuriously affected.

Mr. RICKARDS: Is not that rather a large proposition—that those people, who regulate the lighting of the town, are the local authority having the management of the town?

Round: The town *quoad* the bill.

Mr. RICKARDS: But the local management of the town is a different thing from the power of making contracts for the lighting of the town?

Round: I do not want to strain the language of the S. O., but I submit that I am within the spirit of it.

Mr. RICKARDS: A body whose jurisdiction is limited to one, or at most two objects, can hardly be said to be the authority having the local management of the town?

Round: They have the local management of the town as far as relates to lighting. I shall be told when I come to the petition of the inhabitants, that only 45 out of a population of 9,000 petition. I must press the two petitions together. Here is a company asking for Parliamentary status, and endeavouring to get provisions passed, which will be prejudicial to the inhabitants.

Mr. RICKARDS: One would rather assume, from the small number of petitioners, that the inhabitants generally do not object to the bill. The question is whether either set of petitioners are the parties to raise these objections.

Round: They are both the right parties to object—for this reason. Sooner or later Dorking must adopt the usual form of local government; sooner or later the local board will want to acquire the gas works; and when they do so, the company, if this bill passes, will say, "we have a Parliamentary recognition of our having expended the sum of £15,000," and the local board will have to pay something additional. Now, we allege that the £15,000 has never been spent.

Mr. RICKARDS: You have first to show that you are the right persons to say that?

Round: As inhabitants, we shall be more highly rated.

Mr. RICKARDS: But the question is whether you adequately represent the inhabitants. That is the point we have to decide?

Round: This is not a bill brought in by a local board, but by a joint stock company, seeking to clothe itself with Parliamentary power. An expression of opinion from inhabitants, in such a

case, need not be anything like so strong as the expression of opinion from inhabitants where they are resisting their governing body.

The CHAIRMAN: Do you say that the S. O. draws any distinction between the two cases?

Round: No.

Mr. RICKARDS: The short question is, can we consider the 45 persons who have signed the petition as representing the inhabitants within the meaning of the S. O.? A joint stock company promote; but in what way is it suggested that the bill will injuriously affect the district?

Round: We say, in the first place, that the maximum price is too high.

Mr. RICKARDS: Is that within the meaning of the S. O.?

Round: I cannot conceive any greater grievance to a town than having to pay too high a price for gas.

Stephens: The words "injuriously affect" do not occur in the petition.

Round: We say that the provisions of the bill are "injuriously to the interests of your petitioners."

Mr. RICKARDS: We have generally understood the words "injuriously affect" to apply to some physical or material injury, either injury to trade, interference with drainage, or something of that kind. The objection that gas will not be quite so cheap as some persons think it might be, is hardly a case of injuriously affecting a town.

Round: With great respect, I should urge the contrary. If that limited meaning were to be given to the S. O., most gas bills would slip through unopposed. The great question always is, what sort of light are you going to give, and what price are you going to charge?

Mr. RICKARDS: These inspectors will have the power of contracting, or not, with the gas company, as they think proper?

Round: Yes; but there is nobody else with whom they can contract.

The CHAIRMAN: How many inspectors are there?

Round: Nine; and seven sign the petition.

Mr. RICKARDS: Do they sign as inhabitants as well?

Stephens: Yes.

Mr. RICKARDS: So that altogether, there are only 38 inhabitants who sign the petition, apart from the inspectors.

Stephens (for promoters) was not called on to reply.

Locus standi Disallowed.

Agents for Bill, Walker & Balfour.

Agents for Petitioners, Duncan & Murton.

TRAMWAYS PROVISIONAL ORDERS CONFIRMATION (LONDON STREET TRAMWAYS EXTENSIONS, &c.) BILL.

5th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of (1) THE METROPOLITAN RAILWAY COMPANY.

Tramways—Underground Railway—Apprehended Structural Injury to Arches—Ventilating Shafts—Frontagers—Competition.

In a case where it was shown that a proposed line of tramways would run from and to the same points as an underground railway already constructed, and for a considerable portion of the route would be constructed over the railway tunnel, the Court refused to concede to the railway company a *locus standi* on the ground of competition, but allowed them to appear on the other allegations in their petition, as frontagers, under the S. O., and also as to apprehended interference with the crown of their arches, and with ventilating shafts in the roadway, the petitioners having received statutory authority for the construction of these shafts.

The *locus standi* of the petitioners as frontagers in respect of their stations along the line of the proposed tramways was not contested; but the petition also raised the question of competition, and alleged that the tramways would prevent or limit certain authorized openings in the roadway for the ventilation of the petitioners' railways, and would otherwise prove detrimental to their railways.

The *locus standi* of the petitioners was objected to, because (1) neither the bill nor the Provisional Order contains provisions for taking or using any part of the lands, property, &c., of the petitioners or for granting facilities affecting them; (2) they are not occupiers of any house, shop, or warehouse within the meaning of the S. O.; (3) the fact that tramways are intended to be laid along roads or lands under which petitioners' railways are made, or on roads or lands contiguous thereto, does not entitle them to be heard; they are not owners of and do not repair any of such roads, nor will any of the works under the bill interfere with their railways or works; (4) save in so far as certain of the tramways are to be laid along public roads in front of, or near to, stations of the petitioners, the access to such stations will be in no way interfered with or affected, and the laying of such tramways does not entitle the petitioners to be heard; (5) no competition will be created entitling petitioners to be heard; (6) they have no sufficient interest.

Holway (for petitioners): Our *locus standi* as frontagers is conceded; but we seek to appear on the ground of competition, the tramway system

here proposed being, for every inch of its length—from Portland Road station to Farringdon Street—in direct competition with the Metropolitan railway, and a great portion of the tramway being constructed actually on the roof of our tunnel. This, therefore, is a scheme for carrying the same traffic as ours—a short, omnibus traffic—by the same route and between the same points. We brought in a bill during the present session to enable us to improve the ventilation of our line, and to make openings for that purpose in the roadway. The bill was opposed by the promoters of this bill, but the Committee of the House of Lords would not hear them. They now propose to run over the top of our arch, which is so near the road that the depth to which they will go, in order to lay the tramway, is below the level of the brickwork. This will be an interference with our works entitling us to appear.

Sargood, Serjt. (for promoters): It is true that a bill has been passed authorising the petitioners, under the supervision of the Metropolitan Board, to cut holes for purposes of ventilation in the Euston Road; and our only object in appearing against it was not to prevent them from making those holes, but to secure that the holes should be so cut as not to interfere with our traffic. There is nothing in the Provisional Order which in the least restricts them from making these ventilating shafts, or which limits the right they say they have acquired under the Act. The Court declines to recognise a claim by a railway company to oppose a tramway company on the ground of competition.

The CHAIRMAN: The *locus standi* of the Metropolitan railway company is *Allowed*, except as to so much of their petition as relates to competition.

Limited *locus standi* *Allowed*.

Agents for Bill, *Dorington & Co.*

Agents for Metropolitan railway company, *Dyson & Co.*

Petitions of (2) WEST LONDON RAILWAY COMPANY;
(3) OWNERS, LESSEES, and OCCUPIERS.

Tramways — Railway Bridges — Frontagers —
Locus standi by consent.

[The *locus standi* of (2) the West London railway company was *Allowed*, by consent, against such of the provisions of the bill as might authorise interference with any bridges or works of the petitioners; and as to (3) the Owners, lessees, and occupiers, the promoters also allowed, without argument, a limited *locus standi* under S. O. 135, to such of the petitioners as were owners, lessees, or occupiers in the streets traversed by the proposed tramways.]

TRAMWAYS PROVISIONAL ORDERS CONFIRMATION (LONDON STREET TRAMWAYS, CALEDONIAN ROAD EXTENSIONS) BILL.

5th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of THE METROPOLITAN RAILWAY COMPANY.

The petitioners claimed the right to appear as frontagers, and on the ground of competition. Their *locus standi* under the S. O. was *Allowed* without discussion; but the Court, without calling on counsel for the bill to reply, rejected their claim to appear on the ground of competition.

Sargood, Serjt., was for the bill: *Hollway*, for petitioners.

Limited *locus standi* *Allowed*.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Dyson & Co.*

INCE WATER BILL.

12th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of THOMAS KYNASTON.

Waterworks — Underground water — Wells and Stream — Apprehended draining of, by other borings.

There is no property in underground water; and where a petitioner alleged that a surface stream running through his property would be drained, together with wells belonging to him, by other wells proposed to be sunk by the promoters of a water bill, but there was no *prima facie* ground for believing that the surface stream would be affected, his *locus standi* was *Disallowed*.

The bill empowered the promoters, who were the local board of the district, to construct a reservoir in the parish of Golborne, in the county of Lancaster, with an aqueduct or line of pipes running out of the reservoir through the parishes, townships, and places of Golborne, Ashton-in-Makerfield, Abram, Hindley, and Ince; and also,

to sink wells and shafts, and make borings and other works for collecting water from the lands in those parishes, townships, and places.

The petitioner was the owner of lands in the parish of Towton, near the site of the pumping station of the promoters; and he alleged in his petition that the water now procured by his tenants from wells, and from a stream running through the estate, would be drained by the construction of the proposed works, thereby totally depriving the tenants of their water supply, and seriously diminishing the value of his property. The petitioner had received no notice to purchase any of his land or water rights.

His *locus standi* was objected to, because (1) the bill contains no power to take any lands, streams, water-courses, or property belonging to the petitioner, or to acquire any rights or easements therein; (2) the works proposed will not intercept or interfere with any stream or water belonging to the petitioner, who has no property in underground water flowing in unknown channels; (3) the petitioner is sufficiently protected by the general law from any interference with, or damage to, his property, rights, and interests, by the construction of the works proposed; (4) the petitioner cannot be heard according to practice.

Kynaston appeared in person, in support of his petition.

Bidder (for the promoters) was not called upon for a reply.

The *locus standi* of the petitioner was Disallowed.

Agents for Bill, Wyatt & Hoskins.

Agents for Petitioner, Norris, Allens, & Carter.

MARGATE PIER AND HARBOUR BILL.

12th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS).

Petition of the GENERAL STEAM NAVIGATION COMPANY.

Promenade Pier—Harbour—Shipping Company—Passengers—Local dues—Additional monies secured on—Period of abolition thereby postponed—Single trader—Large ratepayer—New Rates to be levied—Allegation that New Capital should be secured solely upon New Rates.

A bill promoted by the proprietors of a pier to authorise its extension, the levying of a special toll in respect of the new portion, and the raising of additional sums by shares and borrowing to defray the cost of the works, was opposed by a steamship company landing passengers, &c., upon the pier, and paying one-fourth of the total rates, on the

ground that the application of the revenues, as directed by the existing Acts, provided for the ultimate extinction of the debt and cesser of these pier dues, whereas the period at which this extinction could take place must be deferred by the raising of additional capital:

Held, that the steam company were entitled to a *locus standi*; notwithstanding that the promoters offered expressly to exempt both ships and passengers from any liability to the additional toll which the bill imposed.

This was a bill to authorise the company of proprietors of Margate pier and harbour to raise an additional capital of £15,000, with further borrowing powers, for extending their high water pier or jetty. The duties leviable under existing Acts of 1809 and 1812 upon passengers and vessels landing or arriving at Margate, were directed by the latter Act to be applied as follows:—In payment, first, of interest upon monies previously borrowed; next, of a current debt of £300; next, of interest or money borrowed under the Act of 1812; and, next, of the expenses of completing and maintaining the harbour. The surplus revenue, after these different purposes had been satisfied, was annually to be applied in payment of a dividend to the shareholders, not exceeding 10 per cent. in any one year, and then towards the formation and keeping up of a sinking fund of £10,000 to meet the cost of future repairs or improvements. Any surplus revenue still remaining was to be applied, first, in paying off the debt, and subsequently in paying off the shareholders by instalments of one-tenth of the amount of their shares. When these had been fully satisfied, the company was to be dissolved, and the pier and harbour, and other property of the company, and the sinking fund, were to be revested in a local body of Commissioners.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., were taken or used; and (2) no rights of the petitioners were altered; (3) the rates and duties payable by the petitioners as a company owning steam vessels, plying between London and Margate, were not in any way increased or altered, the rates now proposed applying only to persons promenading, and to the use of Bath chairs and perambulators on the contemplated extension of the seaward-half of the existing pier; (4) the petitioners did not represent traders or freighters using the pier, &c., and their interests were not such as entitled them to be heard; (5, 6, and 7) they were only one of a class, and there was nothing exceptional in their position; (8) the bill did not prohibit or interfere with the landing or embarking of passengers, goods, or merchandise in any way.

Rodwell, Q.C. (for petitioners): We are the only steam company trading between London and Margate, and we pay many hundreds a year for the use of this pier. The bill will postpone

the period when the rates will be diminished, and meanwhile will make us contribute to a 10 per cent. dividend on this further capital of £15,000, expended upon works from which we shall derive no benefit whatever. The additional toll is to be taken in respect of every person walking on the new part of the pier "for exercise, pleasure, or any other purpose." There is no exception made in favour of persons landing from a steamer, who already pay a heavy toll; and the addition may seriously affect passengers of the class we carry to Margate. Whenever a company applies for fresh powers, their proceedings are properly open to revision by Parliament.

Mr. RICKARDS: The bill only imposes rates on persons walking on the pier. Does that give the Steam Navigation company a *locus standi*?

Rodwell: Indirectly it does, for the money is to be borrowed on the security of the rates, and the sums which we pay also go to make up the 10 per cent. dividend, both upon the old and new capital. We are the proper parties to be heard, for we pay a fourth of the rates.

Merewether, Q.C. (for promoters): We are here to redeem a pledge given to Parliament last year, when a rival bill was thrown out, that we would ourselves add a new octagon to the end of the pier. We recoup ourselves by charging 3d. for each person promenading there; but we undertake that no fresh charge in respect of its use shall be made on vessels or passengers landing. The Steam Navigation company really do not complain of new rates, but they wish to get the old rates altered. This is the case of a single trader endeavouring to make advantageous terms for himself. (Cliff. and Steph., *Practice*, 49.)

Mr. RICKARDS: The suggestion here is, that according to the prescribed application of the revenues, the effect of borrowing further money upon the rates will be to continue the rates themselves for a longer period?

Merewether: A trader would have no *locus standi* against a railway company coming for fresh capital.

Rodwell: But a body of gas consumers would surely be heard who objected to a fresh expenditure of capital by a gas company, whereby a reduction in price would be postponed. At all events, we ask to have the application of this new tax defined and connected with the additional capital.

Mr. RICKARDS: In other words, that the money should be raised on the security of the rates under the Act?

Rodwell: Substantially, that is what we ask.

Locus standi Allowed.

Agents for Bill, Marriott & Company.

Agents for Petitioners, Grahames & Wardlaw.

MERSEY DOCKS AND HARBOUR BOARD (No 2) BILL.

12th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of THE CORPORATION OF LIVERPOOL.

Harbour Board—Municipal Authority—Docks—Access to River—Bridges—Interference with Streets and Sewers—Obstruction to Traffic—Ferries—Tolls—Paving—Lighting—Repair of Roads—Street Ventilation—Practice—Limited locus standi—Difficulty in prescribing where partially conceded.

The Mersey Harbour Board promoted a bill for improving the access to the river from their docks. The corporation of Liverpool petitioned as the municipal authority, complaining generally that the town under their jurisdiction would be injuriously affected by the bill, and alleging also that it would authorise the promoters to interfere with sewers, levy tolls on traffic coming from ferries, one of which belonged to the petitioners, stop up a street vested in them, and obstruct the street traffic by opening a lock bridge more frequently than it was now opened for the passage of vessels, and by causing the concentration of traffic now distributed over several routes:

Held, that the corporation were entitled to be heard generally on the bill, the Court refusing to limit their *locus standi* to the allegations respecting sewers, ferry-tolls, or street closing, as to which the promoters conceded that they might be heard.

(*Per Cur.*) Where petitioners have confessedly a *locus standi* on more than one point embraced in their petition, it may sometimes be difficult for the Court to carve out the parts of the bill upon which they shall or shall not be heard.

The bill was one "for improving the access to the River Mersey on the Liverpool side, and for enabling the Mersey docks and harbour board, the corporation of Liverpool, and the Birkenhead Improvement Commissioners, and other parties, to contribute towards the cost of such improvement, and to amend the Acts relating to the Mersey docks and harbour board, and for other purposes."

The petitioners, the corporation of Liverpool.

alleged (*inter alia*) that the town would be injuriously affected under the bill by interference with the approaches to the landing-stages; that by the execution of a portion of the proposed works a public street within the borough would be stopped up or inconveniently interfered with; that, in particular, the proposed works would concentrate the traffic passing to and from the river so as to throw the whole or greater part of that traffic into Water Street and Goree, instead of distributing it, the consequence of which would be very serious impediments to the flow of traffic; that the building of warehouses or walls had already impeded the free circulation of air from the river, and further buildings of this nature should be restricted; that the sewerage and drainage of the borough with its water supply (both under the control of the corporation) would be seriously interrupted and interfered with under the bill; and that the promoters proposed to levy tolls upon the traffic crossing the ferries, of one of which the petitioners were owners.

The *locus standi* of the corporation was objected to, because (1) it is not true that any land or property of the petitioners may be compulsorily taken or interfered with; or (2) that the town will be injuriously affected by the bill; nor does the petition show what the suggested injury would be; (3) the petition suggests rather that the scheme will be beneficial, but would be made more so by other works and by certain street improvements; (4) the bill confers no power to construct wharves, warehouses, or other buildings detrimental to the comfort or health of the inhabitants; (5) the bill will authorize no interference with the sewerage, drainage, or water supply of the borough; (6) clause 12 (empowering the petitioners to contribute towards the proposed works) is a permissive clause only, and does not entitle the corporation to be heard; (7 and 8) the petition sets forth no facts and no interest which confer a *locus standi*.

Milward, Q.C. (for petitioners): Though the promoters have put our name in the title of their bill, they maintain that we have no right to be heard. The bill will deal with the landing-stages on the river, and their approaches, yet the corporation of Liverpool, who are the owners of all the streets in the borough, and are charged with the control and management of those streets, are to be excluded from the Committee-room. The result of one of the proposals in the bill will be to keep open the Canning dock entrance for vessels double or triple the time it is open at present, and thereby obstruct the road traffic. Again, by shutting up the George's basin, the dock board reduce the open space which now exists there; and upon any land gained in this way they may build warehouses or walls, thereby preventing the free access of air from the river, such access being essential to the health of the town. In constructing a graving dock at the point indicated, the board will also shut up a public highway, now vested in the corporation. We claim to be heard under the S. O., as the municipal authority of a town injuriously affected by the bill, and there is a distinct allegation to that effect in our petition. One of our sewers empties itself into *George's basin*, part of which is to be filled up.

Then, by clause 14, the Mersey board propose to erect toll-gates and toll-bars, and to take tolls on the traffic coming by the ferries, of one of which we are owners. But all other points in our petition, though giving us a technical *locus standi*, are subsidiary to the question of the approaches to the town of Liverpool, and the necessity of preventing any obstruction to traffic. If we are not heard on this bill, nobody else can be. We should be allowed to go before the Committee, to assist them in coming to a proper conclusion respecting the arrangements that ought to be made for the free course of traffic to and from the river.

Venables, Q.C. (for promoters): I admit that the corporation have a limited *locus standi* to see that proper protection is afforded them in respect of their sewers, and of their tolls as ferry-owners; but they have no right to be heard as the municipal authority of Liverpool. Bridges and roads over the dock property are not under the jurisdiction of the corporation; they are the property of the dock trustees. The public have a right of way over certain parts of them; but the dock trustees repair and light them.

Milward: We light and repair considerable portions of them.

Mr. RICKARDS: The petition alleges that the management and control of the streets and highways within the borough are vested in the petitioners, and further that if the proposed works are executed, a public street or highway will be closed up. You do not traverse those allegations?

Venables: We cannot traverse what is true, viz., that the corporation have the control of the streets and roads (other than those vested in the Dock company), and that we are going to interfere with a piece of New Quay. Our answer is, that we cannot do so without the consent of the corporation. We interfere with no other street or road within their jurisdiction.

Milward: Yes; the lighting over the bridge leading from Goree to Prince's landing-stage is paid for by us. That is a street or road within our jurisdiction, and it is proposed to stop it up. Further, there is the road across the south end of George's dock.

Venables: That road will not be physically interfered with.

Milward: Not structurally; but it will be shut up for twice the length of time it now is, and the traffic will thereby be much more obstructed. That road we repair and pave, as well as light.

Venables: As to the bridge at George's dock, the public have a right to cross it, when it is not open for the passage of ships; and that right the public will still enjoy. The fact is, that during five months of last year we exercised, without objection, the very power of passing additional ships through that gut which we now ask for. Assuming that the corporation have a technical right to object to the stopping up of the highway over what is to be the graving dock, their *locus standi* should be limited to that objection, seeing that it is not a substantial objection, and that a better road will be substituted under the bill.

Mr. RICKARDS: You have admitted their *locus standi* as regards the sewers, and as ferry-

owners, in respect of tolls. If the corporation also have a *locus standi* in respect of a highway, however small, it may be very difficult for us to carve out the parts of the bill upon which they shall or shall not be heard. These special points do not form the subject matter of particular clauses, but are the general consequences of the works which you propose.

Venables: But nothing is more common than to admit parties to be heard only as to sewers, roads, or bridges, where damage is apprehended, and as to no other parts of the bill. What the petition mainly points to is that the inhabitants will be injuriously affected, not by stopping up the passage across the lock where the graving dock will be, but by the crowding of Goree; and that is too indirect an injury to confer a *locus standi*. When traffic comes into Liverpool it is the business of the corporation to provide for it. If the existing streets will not accommodate the traffic, they must be widened, or fresh streets must be made. We give the traffic access to our estate, and the corporation have no *locus standi* to oppose its entry into their streets. Could the road authorities of the Strand have appeared against the Charing Cross terminus on the ground that it would bring more cabs into the Strand, supposing it had not affected their interests in any other way? So as to the Cannon Street station. Wherever you establish a railway terminus, or bring a road from a ferry, you increase the traffic in the streets; but you have a right so to increase it, and the road authority has no right to object. Here, if the corporation want better streets, they must provide accordingly; it is no business of ours to make them. The bill contains no power to erect warehouses which will interfere with the ventilation.

Locus standi Allowed.

Agents for Bill, Dorington & Co.

Agents for Petitioners, Sherwood & Co.

WANDSWORTH GAS BILL.

12th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of the WANDSWORTH and PUTNEY GAS LIGHT AND COKE COMPANY.

Gas Bill—Private Contractor—Supplying without statutory authority—Application of, for Parliamentary Powers—Extension of Limits—Existing Company—Encroachment on District of—Competition—New and existing.

A private contractor who, without Parliamentary powers, had for some years supplied the parish

of Wandsworth with gas, promoted a bill authorising him to supply that parish, together with an adjoining district, the whole of which, including the parish of Wandsworth, was comprised within the limits of an existing company. A petition from that company was objected to on the ground that no additional powers were sought by the promoter, and that the bill would merely improve an existing competition, and render it more effective:

Held, that the petitioners were entitled to a *locus standi*.

The bill was one "to afford a better supply of gas to the parishes of Wandsworth, Battersea, and Putney," and recited that John Dormay, in 1847, erected gas works at Wandsworth, and had ever since supplied gas within that parish, and was now willing to afford a better and cheaper supply in the other parishes mentioned.

The petitioners alleged that they were incorporated in 1856 for the supply of gas in Wandsworth, and in certain parts of the parishes of Battersea and Putney; that the limits of the bill were the parishes of Wandsworth, Battersea, and part of Putney; that the petitioners would be injuriously affected by the bill, by the competition it would create, and by interference with their pipes and mains; and that it was not expedient that the supply of gas to the public should be in the hands of a private individual, who could not be placed under the same regulations and restrictions respecting dividend and otherwise, as the petitioners and other companies were subject to.

The *locus standi* of the petitioners was objected to, because (1) no powers to compete with the petitioners in the supply of gas further or other than those the promoter now possesses, and (2) no powers to take land or interfere with any easements or rights of the petitioners, are sought by the bill; (3) no ground or interest is put forward entitling petitioners to be heard according to practice.

Richards, Q.C. (for petitioners): The districts which the promoter seeks to supply are all included in our statutory district; and we are now the sole suppliers of gas in Putney. Mr. Dormay has no Parliamentary existence whatever, and it is perfectly untrue that he seeks no further powers to compete with us than those he now possesses.

Mr. RICKARDS: I suppose he would not come here for a bill unless he wanted some further power?

Richards: Having no Parliamentary existence, Mr. Dormay is liable to be indicted, or stayed by injunction, if he ventures to open ground, and he is seeking now to open ground and lay pipes wherever he pleases. That in itself is a further power.

Wilkinson (for promoter): The text-books and decided cases establish that a bill merely to render an existing competition more effectual gives no *locus standi* to a petitioner.

Mr. RICKARDS: But the promoter proposes to enter into and supply a new district?

Wilkinson: Having already power to supply that district as a private individual.

Mr. RICKARDS: You mean the power which every British subject has?

Wilkinson: I mean the power he has exercised for the last 24 years without interruption, to the great advantage of the public in Wandsworth.

Mr. RICKARDS: A right he has exercised as one of the public; but now he is seeking for Parliamentary powers in Putney, where he finds a company already existing with Parliamentary powers. That is not a case of increasing an existing competition, but of introducing an entirely new competition, as far as Putney is concerned.

Wilkinson: We have the power to go there now.

Mr. RICKARDS: If Mr. Dormay has power to go to Putney at present, why does he want a bill? It is your coming here for a bill which gives the petitioners a *locus standi*.

Wilkinson: We place ourselves under restrictions if we obtain an Act. The fact that part of the district here is not now occupied by us does not alter the principle of the case, because it only extends existing competition. (Smeth. 48; *Southport Water Bill*, 1867; Cliff. & Steph. 13.) We take no power to construct works; we make use of our own existing works, and seek to extend our pipes to Putney; and if we lay these down without interfering with the pipes of the petitioners, that will hardly amount to a new competition. In case we interfere with their mains, the petitioners have a remedy under their Acts. Their *locus standi*, if allowed, should at least be limited to that part of the bill which raises what is alleged to be a new competition—the extension of our mains into Putney.

The CHAIRMAN: The *locus standi* of the petitioners is *Allowed*.

Agents for Bill, Wyatt & Hoskins.

Agents for Petitioners, Dyson & Co.

DEVON AND CORNWALL RAILWAY BILL.

14th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of the SOUTH DEVON, and the LAUNCESTON and SOUTH DEVON RAILWAY COMPANIES.

Railway—Formation of Junction—Easement—Extension of Time—Agreement—Alleged Waiver—Competition—Broad and Narrow Gauges.—Joint Petition—Locus standi of one Petitioner Disallowed.

A bill proposed (*inter alia*) to extend the time for the formation of a junction with the line of a petitioning railway company, an easement over a small portion of its lands being taken for that purpose. It was shown that some years previously the consideration of the

mode of making this very junction had been postponed, at the instance of the petitioning company, on an assurance in writing, that the promoters' "position should not be injured by the delay."

Held, however, that the petitioning company had a *locus standi*, the junction when made being one that would seriously affect the relative positions of the companies.

Upon a joint petition by two associated railway companies, one of which opposed the bill on the ground of interference with its line by a junction, and the other on the ground of competition and violation of an agreement, the Court distinguished between the two petitioners and *Disallowed* the *locus standi* of the latter.

The bill proposed to extend, for a further period of three years, the time limited for the completion of the Lidford extension railway, and the Okehampton and Lidford extensions.

To this the petitioners objected, inasmuch as the promoters, for the purpose of forming a junction with the Launceston and South Devon railway at Lidford, would, under the bill, be empowered to affect lands and property, of which the petitioners were owners. They also alleged that, once at Lidford, the promoters, or the South Western railway company in their name, would be in a position to open a new competition between Plymouth and Exeter, and Plymouth and London, in violation of an existing agreement.

The *locus standi* of the petitioners was objected to, because (1) there were no provisions for taking or using any part of their lands, railway stations, accommodations, or property; (2) they were not entitled to a hearing on the ground of competition; or (3) of the powers sought to enter into working and traffic arrangements with the South Western railway company; and (4) they had no sufficient interest according to practice.

Cripps, Q.C. (for petitioners): The promoters seek to extend the time by which, under a former Act, they are empowered not to take our property, but to take an easement and effect a junction. This case is similar to the *East and West Junction Bill* (*ante* 141), where the *locus standi* was allowed. They take an easement for the purpose of effecting the junction. Whatever land is necessary for that purpose, and for that purpose only, they will have a right to an easement over.

Mr. RICKARDS: It is not absolutely necessary to take land to make a junction, is it?

Cripps: It is necessary to "use" it. They cannot make a junction without an easement over some part of the land.

Mr. RICKARDS: In the case of a landowner, you actually take away his land; but here you only use it?

Cripps: Yes. This bill also gives a right to the South Western company to work and use the line from Okehampton to Lidford. At Lidford

when constructed, will join the railway from Plymouth by way of Tavistock and Okehampton, on the broad gauge, and access to the district south of Okehampton to the agreement entered into in the purpose of avoiding competition the South Western railway, on the one the Great Western and South Devon on

Up to the present time, though there attempts by the Devon and Cornwall, ment has not been broken in any

RICKARDS: Has the agreement been

It has never had the seal of the attached, but was signed, first by the managers of the Great Western and the eastern railway, and subsequently by the directors of each company. If the South were promoting this bill, it would be a breach of the agreement; yet, if the South, they can claim to do under its terms which would be a breach of the agreement. At present, the South Western are to Plymouth than Okehampton on one Exeter on the other; but by clauses in the Acts of 1865 and 1866, which petitioners' railway from Plymouth to Okehampton are bound to lay down, an existing broad gauge railway, narrow gauge for the accommodation of any company narrow gauge railway connected with the Great Western line at Lidford. Consequently, if the Devon and Cornwall complete their line to Lidford, they will fulfil this condition and will get the right of running down to

RICKARDS: The words of the section are, "any company who shall have a line upon the land connected with the said railways or of railways respectively, shall have the right to run over and use the said railways." By that the fifth section of this bill says, "The company and the South Western company may, from time to time, enter into effect contracts, agreements, arrangements with respect to the following or any of them—that is to say, the leasing, managing, and maintaining by the said companies, or either of them, of the land, or any parts thereof," puts the South Western company into that category? I think it does.

RICKARDS: Can it be said that a company has Parliamentary power to "work, manage, and maintain" another line, is a line which "has a line" on the narrow gauge does not that mean a company that is landlord and owner of a line, and not a company which obtains power to work and use another company's line?

I think it applies to both.

RICKARDS: Where it is said that a company has the line as part of its own property? I submit that it is the same thing if a company work the line. The power here is a great deal more harm than appears at first sight. It puts the South Western at a disadvantage and being there, a direct competition

will be established all the way to Plymouth, which does not exist at present.

Littler (for promoters): In 1863, our line was authorised in the face of the petitioners' opposition, and we got power to make a junction with them. Since then we have had extensions of time; but the easement was granted to us in perpetuity, and all we now ask is further time in which to exercise our right. That cannot be said to be interfering with their property. We only postpone the day on which we shall exercise the right we have over this bit of land.

Mr. RICKARDS: If this bill does not pass, the right of easement will be gone?

Littler: Yes.

Mr. RICKARDS: The Act giving you the easement legalized that which would have been a trespass?

Littler: Yes; but we say that the South Devon company have waived their right to object to the delay. [Counsel read a correspondence which had passed, in 1866, between the engineers of the two companies, as to the best mode of forming the proposed junction; and relied especially on a letter dated the 13th July, 1866, and written by the engineer of the South Devon company to the engineer of the promoters, saying: "I submitted the plan of the proposed junction of the Devon and Cornwall railway with the Launceston and South Devon railway, at Lidford station, to the South Devon directors yesterday; but, previously to my doing so, I saw our solicitor, Mr. Whiteford, who pointed out to me, that by the 16th clause of the Okehampton Railway Act, 1863, you are precluded from becoming owners of any of the lands belonging to the Launceston company, and that you can only acquire an easement over them; such being the case, and unless there is any other reason for settling the junction at once, the directors consider it to be premature to enter into the question at present, as many circumstances may arise between this and the time you will require to make the junction, to render it necessary to alter the plan we might now agree upon; and I am instructed to say, that your position shall not be injured by the delay. Considering that you have no power to take the land, and that you have given notice to the landowner to take the land that will be required from him to form the junction, I concur in the opinion of the directors; and consider it would be better to delay the settlement of the plan until you require to make the junction." That offer was accepted in the reply as a pledge on the part of the petitioners, who offered no opposition to the extension of time subsequently obtained by the promoters. Now, however, the petitioners avail themselves of this technical ground to claim a *locus standi*. We admit that they are landowners, and that we seek to legalize that which would otherwise be a trespass; but we say that they have put themselves in a position in which they are not entitled to be heard.

Mr. RICKARDS: By a waiver?

Littler: Yes; they have said "do not do it within your powers, and you shall not be prejudiced."

Mr. RICKARDS: Is not what they mean pro-

bably no more than this—"we shall not interpret this as being a compulsory power to take land, and therefore do not be afraid that the expiration of the time for the compulsory taking of lands shall prejudice you?"

Little: They say "true, you have no power to take our land, and therefore it does not prejudice you;" but they go much farther in their letter.

Mr. RICKARDS: This does not come really within the category of taking land, because there is no need to purchase land. The question arises when the time comes to complete the works, and to effect a junction. Therefore they say, "Do not be in a hurry because your time for compulsory purchase is expiring; the time has not arisen to make the junction."

Little: They say this—the power as to the compulsory taking of land has nothing to do with it; when you come to make the junction is the material time. And they add—"you, having nothing but the power to make a junction, shall not be prejudiced by the delay." In the House of Lords they did not set up this claim, and when the Court is dealing with the case of landowners it must take into consideration all the surrounding facts. On other grounds, I submit they have not established a right to appear. Under the original Act of 1862 the South Western company are already at Okehampton, and instead of working the line between Okehampton and Lidford, in the name of the Devon and Cornwall company, it is avowed that there is to be a working agreement with the South Western company. As to the agreement of 1862 between the two great companies, neither of these is before Parliament in the present bill, and nothing can be done in the way of overriding an agreement, except by express repeal. The object of the existing clause providing that any company who should have a line upon the narrow gauge connected with the petitioners' railway at Lidford, should have the right to run over that line to Plymouth, was to obtain access for all narrow gauge traffic from Lidford to Plymouth. The case of the South Western company was clearly contemplated, for if only the Lidford extension company had been meant the clause would have been so restricted, instead of being extended to "any company."

Mr. RICKARDS (after consultation): The petition is by two companies?

Cripps: Nominally.

Mr. RICKARDS: Which is the company whose land is to be joined—the company against whom the easement is given?

Toogood, (Parliamentary Agent for promoters): The land in fact belongs to the Launceston and South Devon company.

The CHAIRMAN: The *locus standi* of the Launceston and South Devon company is *Allowed*; that of the South Devon company is *Disallowed*.

Agent for Bill, *H. Toogood*.

Agents for Petitioners, *Sherwood & Co.*

LOCAL GOVERNMENT SUPPLEMENTAL (No. 3) BILL.

19th June, 1871.—(Before *Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Petition of DOCK COMPANY of KINGSTON-UPON-HULL.

Provisional Order—Municipal Corporation—Dock Company—Local Government Act, 1858—Authority of Local Government Office—Proposed filling up of Dock and conversion of site—New Landing Places—Alleged injury to Dock System—Crowding of Vessels—Increased Liability to silting—Tonnage Rates and Wharfage—Jurisdiction of Dock and Harbour Master—Ratepayers—Representation.

A Bill, confirming a Provisional Order issued under the authority of the Local Government Act, 1858, was opposed by the Dock company of Hull, because, as they alleged, the Local Government office had no power so to deal with any matters other than those specially contemplated by the Act. The object of the Provisional Order here was to empower the Corporation of Hull to fill up a ferry-boat dock constructed by them under the authority of a local Act passed for that and other purposes in 1801; and the petitioners contended that the construction of a dock and landing-place had no relation to the Local Government Act, and could not, therefore, be the subject of a Provisional Order. The petitioners also alleged (*inter alia*) that the jurisdiction of their dock master would be interfered with, and that the passage of vessels to and from their docks would be obstructed, by the proposed works:

Held, that the petitioners were entitled to a *locus standi*.

This was a bill "to confirm a Provisional Order under the Local Government Act, 1858," relating to the district of Kingston-upon-Hull. In 1801 an Act was passed for enlarging and improving the market place of Hull, and for making a commodious street thence to the river Humber, with a dock and wharf or landing-place for the ferry and market boats belonging or resorting to the town. Under that Act the corporation constructed a dock communicating with the Humber, and a landing-place for the accommodation of these ferry and market boats, which were re-

quired to embark and disembark passengers and goods at such landing-place and at no other. It was now sought by a Provisional Order to repeal so much of the Act of 1801 as obliged the corporation to maintain this dock and landing-place, and to empower the corporation to fill up the dock, and (as the local board of health for the borough) to convert it into a pleasure ground. The Order further provided that the corporation might make and maintain on the site of the dock a landing-place or places from the Humber, and might appoint a superintendent to direct the mooring or unmooring of vessels, and appoint the berths for landing or taking in passengers or cargo.

The petitioners, the Dock company of Hull, were incorporated by an Act passed in 1774, and their docks communicated both with the rivers Hull and Humber. They alleged that they were deeply interested in all matters relating to the navigation of these rivers; that although in other respects the local Act of 1801 might be deemed to relate to the purposes of the Local Government Act of 1858, the provisions concerning the ferry-boat, dock, and wharf, which the corporation of Hull had constructed, bore no such relation; and they alleged that they were injuriously affected by the proposed Order, being advised that the filling up of the ferry-boat dock would injure the dock system and the approaches thereto, by increasing the liability to silting; that land belonging to the petitioners would be interfered with by the corporation under the said Order; that the market, ferry, and other boats would be deprived of the accommodation which had existed for nearly 70 years, and the removal of the landing-place would force these small craft into the petitioners' Humber and Albert docks basin, to the great prejudice of the petitioners, and interference with the working of the basin; that if the power of constructing a new landing-place or places were exercised by the corporation, they would deprive the petitioners of tonnage-rates and wharfage, by allowing any ship to load or unload at such landing-places; that plans and sections of the proposed works ought to have been prepared and deposited for public inspection, together with an estimate of the expense of the works, so that the petitioners and others interested might have ascertained the nature and extent of the works and their cost; and that the powers sought to be conferred upon the superintendent of the landing-place would clash and interfere with the powers and jurisdiction now vested in the petitioners and their dock-masters.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs will be taken compulsorily; (2) they do not allege upon what grounds they are entitled to object to the jurisdiction of Parliament to consider the provisions of the bill; or (3) how any lands belonging to them will be interfered with by the corporation; (4) they do not represent the authorities of the market, or allege that they are owners of ferry or other boats, or that they will be deprived of any accommodation, or (5) any facts entitling them to be heard on the ground of competition, as regards tonnage-rates and wharfage, or (6) any grounds upon which

plans and sections ought to have been deposited; (7) there are no allegations upon which, according to practice, they can be heard.

Shrubsole, Parliamentary Agent (for petitioners): The bill recites that the Home Secretary has, under the provisions of the Local Government Act, 1858, "duly made" the Provisional Order contained in the schedule. Now, we shall contend before the Committee that the Home Office has no jurisdiction here. It is empowered to issue orders on matters relating to the Local Government Act; but one of the subject-matters of the Local Act of 1801, viz., a dock, has nothing to do with things contemplated by the Local Government Act. With regard to the bill itself, we do not know the nature of the works which the promoters will construct, but we do know that the jurisdiction of the superintendent for regulating the mooring, &c., of vessels, will clash with the jurisdiction of our harbour-master, which extends to within 200 yards of the centre of the entrance to the Humber dock basin. The bill authorises the corporation to reconstruct a landing-place for the ferry and market boats; but if no such landing-place be constructed, these boats will go into the old harbour and impede the passage of shipping to and from our docks, the old harbour being at present free from this small craft.

Mr. RICKARDS: Is it not like the case of a railway company objecting that a neighbouring line is going to be closed, and that thus a good deal of small traffic will be sent along their line?

Shrubsole: The market and ferry-boats will not feed us when they enter the old harbour.

Mr. RICKARDS: It is a highway, is it not?

Shrubsole: Yes; but at present it cannot be used by this small craft. The promoters want to repeal the clause in the Act of 1801, which restricts market and ferry-boats from using any landing but the corporation landing. Then the dock company is the largest ratepayer in the borough, and as ratepayers the promoters do not raise any objection to us.

Gale, Parliamentary Agent (for promoters): As ratepayers, the Dock company are represented by the local board of Hull, i.e., the corporation, and therefore have no right to be heard against that body. The petitioners question the authority of the Local Government Office to apply for this Provisional Order. That is a point for the decision of the Local Government Office and Parliament. As to the ferry-boat dock, the local board think it better for sanitary purposes to fill it up and turn it into a recreation ground, and they also take power to alter the course of the sewers. These changes do not concern the dock company; and unless the land which they say will be interfered with is actually taken, they cannot be heard. They have nothing to do with the accommodation of the ferry-boats, and as we do not propose to charge rates or tolls, the petitioners cannot be heard on the ground of competition. The Humber conservancy board control the navigation of the river, and will take care that it is not interfered with. As to our supposed interference with the functions of the dock master, the petitioners have not shown that, under their Acts, they have any

special jurisdiction over the area with which we propose to deal.

The CHAIRMAN (after deliberation): The *locus standi* of the petitioners is *Allowed*.

Agent for Bill, *Gale*.

Agents for Petitioners, *Dyson & Co.*

LONDONDERRY & COLERAINE RAILWAY BILL.

19th June, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of Sir F. W. HEYGATE, Bart., M.P., and others.

Railway—Creditors' Bill—Not sealed by Company—Transfer of undertaking, "freed from liabilities"—Disputed priorities—of Debenture holders—and unpaid Vendors of land—Agreement to execute works for their accommodation—Lands taken, but unconveyed—Costs, charges, and expenses of such taking—Lien valid after 19 years—or barred—Arrangement Act—Estoppel of Creditors by—Pre-preference—not Extending to Landowners' Lien—Recital in bill untrue.

In 1852, an Act was passed authorising the construction of the Londonderry railway. Certain land was taken under the authority of the Act, but no conveyance was executed; the whole sum due to landowners was not paid; nor did the company construct certain works which they agreed to make for the accommodation of one of those landowners. In 1862, the company being in difficulties, an Arrangement Act was passed, which recited that there were unpaid vendors and prescribed the mode in which their claims, and those of other creditors, should be met, viz., by means of pre-preference debentures issued under the authority of the Act. The landowners did not appear against that bill, nor did they avail themselves of the mode of payment therein provided. The debenture-holders now promoted a bill for the transfer of the undertaking to the Belfast railway company, freed from all debts, liabilities, and engagements of the conveying company; and they contended that the four landowners who petitioned against the bill, having neglected to avail themselves of the remedy provided by the Arrangement Act, had now no lien

on the land, and were either barred altogether by that Act, or must be left to enforce their claims against the Londonderry company. The bill contained an express recital that there remained no unpaid vendors of land:

Held, that under these circumstances, the case did not come within the rule by which vendors of land are treated merely as creditors, and left to their legal remedy; and that the petitioners were entitled to a *locus standi* against the bill, although their claim was 19 years old, and meanwhile they had taken no legal steps to enforce it.

The bill was one "to authorise the sale of the Londonderry and Coleraine railway to the Belfast and Northern Counties railway company, and for other purposes;" and contained a provision by which the undertaking of the Londonderry and Coleraine company was handed over to the Belfast company, "subject to all the obligations and liabilities of the company, under the recited Acts, with respect to the maintenance, repair, management, regulation, working, and user of the vested property, or any part thereof, and the traffic on the railways of the company; but freed, and by this Act absolutely discharged, from all other debts, liabilities, and engagements of the company, whether directly affecting the vested property or affecting the company in respect of the same."

The petitioners, Sir F. W. Heygate, and three others, represented either unpaid vendors of land or parties with whom the Londonderry and Coleraine railway company had agreed to execute accommodation works which had not been constructed. They alleged that at present they had a lien upon the lands taken from them respectively in respect of the money unpaid; and they complained that no provision was made in the bill for the execution of their accommodation works, or for the payment of the money due to them; and that if the bill passed their claim would be extinguished altogether.

The *locus standi* of the petitioners was objected to, because (1) their only claim to be heard is founded upon the statement (which the promoters do not admit to be true) that monies are due and owing from the company to the petitioners for costs, charges, and expenses incurred by them in and about the taking of their lands, and the production and verification of their respective titles; and, further, as regards the petitioner, John Alexander, that a certain sum of money with interest remains due in respect of the purchase by the company of certain lands from his predecessor in title. By the Londonderry and Coleraine Railway (Arrangements) Act, 1862, it was provided that the only remedy or recourse of parties having claims, such as those set up by the petitioners, should be against the fund to be created by the issue of A debentures. In pursuance of the powers conferred upon them by the Act of 1862, the company issued A debentures to

the whole amount authorized by that Act, and the fund raised by the issue of such debentures was sufficient to satisfy, after providing for all prior claims, the claims of any of the present petitioners. They have no right, therefore, now to claim payment of any sums due to them out of the proceeds of the sale of the undertaking under the bill; (2) it is not true that the petitioners have abstained from pressing for the amounts alleged to be due to them in consequence of the financial difficulties of the company, inasmuch as the company have had ample funds to discharge any just claims of the petitioners, who might, if so advised, have obtained payment of any monies due to them out of the fund created by the issue of the A debentures; (3) the suggestion in the petition that the petitioners have a lien upon the lands taken from them by the company in respect of their alleged claims, is unfounded, inasmuch as such lien, if it ever existed, was destroyed by the Act of 1862; (4) the petitioners did not oppose, but acquiesced in, the provisions of the Act of 1862, and are therefore estopped from setting up their present claim.

Round (for petitioners): Our claims are really liabilities attaching to the company, and the bill hands over the undertaking free from all liabilities. We have not been paid for our land; we have never executed a conveyance; and the effect of the bill will be to deprive us of our money and of any adequate remedy. The line is made over the land of the petitioners, and was made 19 years ago: but the money due in respect of it has not been paid, and the crossings and accommodation works agreed to be executed by the company, have not been made.

Thomas (for promoters): I appear for the debenture-holders, this being in fact a debenture holders' bill for a compulsory sale as against the company. The bill is not under the seal of the company, and the company being no parties to the bill, I can neither admit nor deny that they owe anything.

Mr. RICKARDS: Are you going to repudiate the obligations of the company, because you appear for debenture-holders? Whoever the promoters are, this is a bill for transferring the undertaking of the company to other parties, and these creditors complain that if the transfer is made they will lose their remedy.

Thomas: The petitioners have let their claim lie by for 19 years.

Mr. RICKARDS: That does not bar them.

Round: The bill recites that there are no unpaid vendors of land, and Parliament is asked to pass provisions founded on that recital which, as we allege in our petition, is directly at variance with the fact, we being unpaid vendors, and being still in possession of the lands, though the company have got our land. If the bill passes, the property of the company will vest in the Belfast company freed from all liabilities, and we shall be completely shut out from a remedy.

Mr. RICKARDS: This debt in respect of your land is not a charge upon the vested property of the company, but is merely a debt due to the petitioners from the company?

Round: It is the ordinary case of a company

taking land and not paying for it. We are not barred by the Act of 1862.

Mr. RICKARDS: Supposing the claims of the petitioners to be well founded, why do they not bring an action for the recovery of the amounts due to them?

Round: We have hitherto abstained from taking any legal proceedings against the company, believing that it would be hopeless to do so; and if the bill passes we shall be precluded from taking such proceedings, as the whole property of the company, including the land taken from us, will be vested in the Belfast company freed from all debts, liabilities, and engagements.

Mr. RICKARDS: The Londonderry company is not to be extinguished?

Round: No; but our land will go, and therefore our remedy by *elegit* will be of no use; we should probably have no remedy left, except an action of debt against the company. At present, if the Londonderry company desire a title to the property, we can refuse to execute a conveyance, and they would, therefore, be obliged to pay us our claims; but directly the bill passes, the Belfast company will say: "We do not care for a conveyance; we have the property, and we have a statutory title, the Act saying that the property comes to us absolutely free from all debts."

Mr. RICKARDS: We have held hitherto that an unpaid landowner is simply a creditor, he having his remedy at law, and having, therefore, no *locus standi* on the ground that some of the money, due to him for his land, remains unpaid?

Round: But here he is a creditor, whose rights will be practically destroyed if the bill passes.

Mr. RICKARDS: The bill does not exonerate the company from the payment of its simple contract debts; and on making over the undertaking, the company will receive a consideration from the Belfast company. Will not the money so received be applicable for the payment of simple contract debts?

Round: No; it will be absorbed by the debenture-holders. They are to be paid first, and nothing will be left for other creditors. Even if this were not so, I doubt whether, after the recital in an Act of Parliament, that there exist no unpaid vendors of land, we could establish our claims.

Mr. RICKARDS: You ask to be heard against the recital that there are no unpaid vendors?

Round: Yes; we ask to be allowed to show that we are unpaid vendors. And in this respect the case differs from others in which you have held that an unpaid vendor has no *locus standi* because he is a creditor. As to the operation of the Act of 1862, that is a question for the Committee; the Court will not say the question whether we are or are not barred by it.

Mr. RICKARDS: You do not allege that you ever made a demand for the payment of this money?

Round: As a matter of fact, we have asked for it since that time. We were just as much unpaid landowners in 1862 as in 1871, but the Act of 1862 never made this statement contained in this recital; on the contrary, it does.

forth that we were to be paid out of the proceeds of the sale of the undertaking.

The CHAIRMAN: Your petition does not state that the purchase-money for the land has not been paid, but rather implies that the money owing is for the costs, charges, and expenses incurred in and about the purchase?

Round: We say that no conveyances have been executed, and that is tantamount to saying that the purchase-money has not been paid.

Sir J. DUCKWORTH: A conveyance might be withheld simply on account of unpaid costs?

Thomas (for promoters): The petitioners are really complaining of existing legislation. This bill is a mere supplement to the Act of 1862, which was an arrangement sanctioned by Parliament for releasing the company from its difficulties, and if the petitioners did not choose to appear then, they are not entitled to do so now. They may still have their remedy against the company; but the debenture-holders who are promoting the bill are now told that there are unpaid vendors whose debts date from 1852, and who must take priority of other creditors.

Mr. RICKARDS: The Act of 1862 admits that there were then unpaid vendors.

Thomas: Yes, and makes a full and final provision for paying them; and we now represent the persons who found the means. The question now is which of two innocent parties shall give way—we who raised the necessary funds on the faith of the Act of 1862, or creditors who have lain by for 19 years. Under that Act the petitioners had the right either to take A debentures in satisfaction of their claims, or to require payment out of the monies advanced by the debenture-holders. The petitioners, however, did not apply for debentures, and took no other steps to procure payment out of the funds raised under the Act of 1862; they have therefore no right to claim now a prior charge upon the undertaking. Though the undertaking is to be transferred, the company remains; and the remedy, if any, of the petitioners must be against the company. Under the Act of 1862, we, the A debenture-holders, had a paramount charge upon the whole undertaking of the company, Parliament giving this pre-preference charge, in order that the company might obtain money upon easier terms.

Mr. RICKARDS: These A debentures were to have priority over all other debentures and shares, but *non sequitur* that they were to have precedence over a landowner's lien?

Thomas: As to the statement in the preamble that there are no unpaid landowners, our view is that the Act of 1862 was a final adjustment of all outstanding claims. But the petitioners will not be prejudiced by a statement to which they are not parties, and which in law, therefore, cannot bind them.

The CHAIRMAN: The *locus standi* of the petitioners is *Allowed*.

Agents for Bill, *Dorington & Co.*

Agents for Petitioners, *Sherwood & Co.*

ISLE OF WIGHT, AND COWES AND NEWPORT JUNCTION RAILWAY BILL.

17th July, 1871.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of (1) the ISLE of WIGHT (NEWPORT JUNCTION) RAILWAY COMPANY.

Railway—Competition—not bonâ fide—Powers of Rival Company on point of Expiring—Works uncompleted—and in part uncommenced—Petitioners called on to Prove Allegations—Prima Facie Evidence of—Afforded by former Act—Technical Locus Standi—Argument as to, by Promoters—For Committee rather than the Court—Practice—Jurisdiction—Court only regards existing status of Parties.

A Bill to authorise the making of a line of railway, amounting to a revival of a scheme unsuccessfully proposed to Parliament in 1868, was opposed by the rival line, sanctioned in that year, but which had since made comparatively little progress:

Held, that the petitioners, as representing an authorised line, were entitled to a *locus standi* on the ground of competition, though their compulsory powers would expire in a fortnight.

(*Per Cur.*) The Court cannot go beyond the existing status of the parties at the time of argument.

This was a bill for the construction of a line of railway in the Isle of Wight. The line of the petitioning company had been authorised in 1868, in preference to rival railway schemes before Parliament in that year, and the petitioners now alleged that the bill was a revival of one of these competing schemes.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs were taken; (2) they would be unable to complete so much of their own line as required the exercise of compulsory powers before these expired on the 31st July, 1871; (3) the proposed railways would not compete with those of the petitioners; (4) only 3 miles of the petitioners' line had been commenced, and no part of it completed; no permanent way had yet been formed, or rails or sleepers laid; and, although authorised to be constructed through the town of Newport on a viaduct, and by a bridge over the river Medina, no portion of these works had been commenced, and no property for this purpose acquired; (5) it had been proved in the House of Lords that the petitioners had no *bonâ fide* subscribed capital; and it was not in accordance with public interests that a company whose powers expired in a few days, should be permitted to oppose on the ground of competition;

(6) there could be no competition with a line which could not be constructed; (7) the petitioners had no rights or interests in the river Medina, or in its tolls, entitling them to be heard against the proposed agreement between the corporation of Newport and the promoters; (8) no ground for a hearing was shown according to practice.

Rodwell, Q.C. (for promoters): Before the petitioners proceed to argue their *locus standi*, I call on them to prove the fourth paragraph in their petition, which alleges that their line "is now in construction, that a very large proportion of the land has been acquired, and a large part of the whole line completed up to the laying of the permanent road, and that arrangements have been made to ensure the early completion of their line, and the construction of such portion as requires the exercise of their compulsory powers, within the period authorised by their Act."

Littler (for petitioners): This is not the case of a person called on to support his allegation that he is a landowner, by giving *prima facie* evidence. We are in possession of an authorised line.

Rodwell: It is exactly the same in principle. The petitioners allege that they have a line, when in fact they have nothing but an Act of Parliament, which expires this day fortnight.

Mr. RICKARDS: As things stand at present, the line of the petitioners is an authorised line and the powers have not expired?

Rodwell: But surely it would be unreasonable to give a *locus standi* on the ground of competition to a line which it is physically impossible to construct in the time.

The COURT: We do not think the petitioners are called on to prove the allegation.

Littler: In 1868 three bills were heard together as competitive schemes. Ours, distinguished as "Saunders's line," was authorised, and the others were thrown out. One of these, known as 'Martin's line,' is now revived, and is obviously a competing scheme with the authorised line. One of the promoters' witnesses stated in the House of Lords, that if both lines were constructed the promoters' line would "smash" ours. We, however, were selected as the best. Would it not be monstrous to shut us out now, when they come with the identical bill reprinted and the identical plans re-deposited?

Rodwell, Q.C. (in reply): Under ordinary circumstances, I might admit, looking at the map, that the petitioners were entitled to be heard on the ground of competition; but this is no ordinary case. Nothing short of a miracle can enable the line to be made before their powers expire.

The CHAIRMAN: We think the point you are now upon one rather for the Committee than this Court.

Rodwell: In one sense, no doubt. But we contend that there are no elements of competition existing in the line. In a few days their Act of Parliament will be a piece of waste paper, and their powers will cease, just as if no such powers had ever been granted. Legally and physically, the line has ceased to exist already.

The CHAIRMAN: No; it is going to cease?

Rodwell. Practically it is the same thing. I desire to call evidence on the point.

Mr. RICKARDS: If we go beyond the existing status of the parties we shall not know where to stop. You put a case where the powers will expire to-morrow. Suppose a case where the powers were to expire in three months, it might be a very controverted question between the promoters and the petitioners, whether the line could be completed in that time, and we should have to go into a long enquiry, and make up our minds whether, upon the engineering evidence, it would be possible to complete the line within the time. Then, again, supposing—apart from the powers being about to expire—you proposed to prove that the company were so hopelessly insolvent that it would be morally, though not physically, impossible they could ever make their line, that would be another question. Still the principle is the same. The question which we have to decide is—is the party at the moment of the argument a competent petitioner? Does he stand in the position the S.O. requires, in order to give him a *locus standi* at the present moment? If he is admitted, and you can show to the Committee that, though technically he has a *locus standi*, yet practically he can never make the line, and therefore competition can never arise, your opponent will be out of Court.

Rodwell: If the Referees feel bound not to go into evidence to ascertain the truth of the allegations made by the petitioners, I do not think there is any use in contending that they have not a *locus standi*.

Mr. RICKARDS: If a man, for instance, says—"I am a landowner," and that is controverted by the promoters, we must go into evidence to decide whether he is a landowner or not; but this is not such a case. You do not deny that at the present moment the petitioners are an authorised company?

Rodwell: No; but though authorised, they are moribund.

Littler: There are 300 men at work on the line.

Rodwell: I submit that it is entirely in the discretion of the Court whether they will give a *locus standi* on the ground of competition, and that competition ought to be *bona fide*, not put forward merely for the harassing of opponents.

Locus standi Allowed.

Agents for Bill, *Porter and Twynan.*

Agent for Petitioners, *Batten.*

Petitions of (2) the CORPORATION OF SOUTHAMPTON;
(3) CHAMBER OF COMMERCE OF SOUTHAMPTON;
(4) MAGISTRATES, MERCHANTS, &C., OF NEWPORT.

*Railway—Fixed Bridge—Injury to Navigation—
and Trade—Corporation—Chamber of Commerce—
Adjacent Seaport—Town above Bridge—
Access to Wharves obstructed—Shipowners—*

How far Represented in Petition—Previous Opposition in House of Lords—Protective Clauses Obtained by—Municipal Authorities and Inhabitants—their rights under the S. O.—Interest too remote—Traders, Freighters, and Merchants—their Right to Appear—Petition—Distinct Allegation—want of—under S. O. 134.

A railway company which proposed to cross with a fixed bridge the only navigable river in the Isle of Wight, making compensation to owners of vessels for the expense of altering their masts, was opposed by the corporation and the Chamber of Commerce of Southampton, on the ground of apprehended injury to the trade of that port:

Held, that the interests of the petitioners were too remote.

Another petition was presented against the bill on similar grounds by inhabitants (including shipowners) of Newport, a town in the island, lying above the proposed bridge:

Held, that they were entitled to a hearing, although the corporation of Newport had opposed the bill in the House of Lords, and had obtained protective clauses.

(*Per Cur.*) "The *locus standi* of a corporation entirely depends on the S. O. (as to municipal authorities and inhabitants), and requires an allegation, not in precise terms but in effect, that the town will suffer in its interests. The right of traders, freighters, and merchants to a hearing has been admitted independently of the S. O."

The promoters proposed to cross the river Medina near Dodner, with their railway. By the bill as originally introduced, this crossing would have been upon a swing bridge. In the House of Lords, however, clauses were introduced requiring a fixed bridge 16 feet above high water mark, and the promoters now proposed to compensate persons trading on the river for the expense of changing the masts of their vessels from fixed to moveable masts.

The corporation and Chamber of Commerce of Southampton urged that the river Medina formed the only practicable harbour on the north side of the Isle of Wight; that a large trade was carried on by sailing vessels between Southampton and its neighbourhood and Newport, along the river Medina; that owing to the conditions of the passage, masts capable of being lowered would be inapplicable and unseaworthy; that the effect of the bill would be to extend the leasing powers possessed by the corporation of Newport as to the tolls of the Medina from a period of 3 years to 999 years, and to prevent any reduction of those tolls; and that the bill

would also strengthen existing railway interests and throw traffic, which would otherwise pass up and down the river, on to one or other of those railways, which, when connected by the new line, were to be worked as one system.

The magistrates, merchants, and other inhabitants of Newport complained that the proposed line, crossing the Medina, a mile and a-half from Newport, by a fixed bridge having a 40 ft. span and only a 16 ft. headway, would seriously affect the navigation and prevent vessels trading with Newport from reaching the quay, thereby prejudicially affecting the warehouses and stores, and shipping trade of the town, to the great injury of the petitioners.

The *locus standi* of the corporation of Southampton was objected to, because (1) no lands, &c., of theirs were taken; (2) they had no interest in Isle of Wight railways, or in the River Medina and its traffic, entitling them to be heard; (3) the corporation of Newport, who obtained clauses in the House of Lords, were conservators of the river Medina, and it was inconsistent with practice that a foreign corporation should obstruct the carrying out of the arrangements which had been entered into; (4) the traffic between Newport and Southampton was carried on by nine small vessels which could easily have their masts altered, without loss of sea-going power; the fixed bridge substituted by the Lords' Committee, after full consideration, for an opening bridge being likewise desired by the Board of Trade; (5) the opposition of the corporation of Southampton was not *bonâ fide* but colourable, their wish being to divert traffic from Newport to London through Southampton, instead of following the quickest route through Portsmouth. The presentation of their petition, moreover, had been objected to, and only authorised by a majority of one, upon an indemnity being given to the corporation against expense; and consequently this was not their petition within the intention of the S. O.; (6) no ground for a hearing existed according to practice.

Similar objections were taken to the *locus standi* of the Southampton Chamber of Commerce and of the magistrates, merchants, and other inhabitants of Newport. As regards the latter, there were also the following additional objections:—(3) the petition was not *bonâ fide* that of the magistrates, &c., but of persons interested in the construction of a railway from Newport to Sandown, and of others who, in the House of Lords, obtained the addition of clauses for the protection of the river Medina: the petition was colourable, intended to deceive Parliament, and not within the provisions of S. O. 134; (4) it was contrary to practice that the inhabitants of a town should be reheard against a bill, after the local representatives of the town had been fully heard upon their petition, and had agreed to the insertion of clauses.

Littler (for Southampton corporation and Chamber of Commerce, and magistrates, &c., of Newport): The corporation are the representatives of the trade between Southampton and the Isle of Wight, which is carried on by vessels making 1000 passages a year each way. They object to the provisions compelling an alteration in the masts of these vessels.

Mr. RICKARDS: The objection taken by the petitioners seems to be that what is proposed is contrary to public policy; it is not that the bill would injuriously affect them as representing the interests of Southampton.

Littler: They also lay stress on the question of tolls.

Mr. RICKARDS: They do not bring the injury very close home to Southampton.

The CHAIRMAN: Is there any considerable trade between Newport and any other place except Southampton?

Littler: There is some with Portsmouth, but the main traffic is with Southampton, which therefore is principally interested in the navigation. If you should think that the corporation do not directly represent the traders, then the proper body to do so is the Chamber of Commerce. Their petitions are practically identical. It is for the Court to decide which of the two bodies they think is the best representative of the traders.

Mr. RICKARDS: Is there any allegation in the petition of the corporation that satisfies the S. O. which authorises the Referees in their discretion to admit the municipal or other authority to be heard on behalf of a town or district, "alleged to be injuriously affected" by the bill?

Littler: There is no allegation in so many words.

Mr. RICKARDS: Is there any statement which imports that the interests of Southampton would be injuriously affected?

Littler: There are allegations which show that obstructions in the river Medina would injuriously affect the trade of the town. The Chamber of Commerce unanimously petition.

Mr. RICKARDS: The *locus standi* of a corporation entirely depends upon the S. O. and requires an allegation, not in precise terms but in effect, that the town will suffer in its interests. There does not seem to be anything amounting to that in the petition of the corporation.

Littler: Probably not. But the Chamber of Commerce, on a matter affecting the public highway of which they are the main users, are entitled to be heard. As to the petition of magistrates, &c., of Newport, it is signed by a great number of persons, among others by 9 shipowners.

The CHAIRMAN: The petition is entirely against the bridge?

Littler: Yes; though the corporation of Newport obtained terms to satisfy them, the traders most interested are not satisfied.

The CHAIRMAN: The corporation will get their rent from the railway company whether the trade falls off or not?

Littler: Yes; if the company utterly ruin the navigation, the corporation, as regards tolls, will

be just as well off as they are now. *Fareham & Netley Bill*, 1865 (Smeth. 120), is a decision in our favour. We are owners of ships which will not be able to get up to the wharves.

Rodwell, Q.C. (for promoters): The interest of the corporation of Southampton is too remote. The trade of Newport is not with Southampton only, but with Portsmouth and Fareham and other parts of the English coast. The petitioners have no more right to be heard than the corporation of London, for billy-boys go from London to Newport. They seek to be heard upon grounds of public policy. But they merely back up the competing railway scheme, and they do not show how they are specially affected. The Chamber of Commerce petition in the same language, and show no special grievance. They say it is against public policy to allow railway companies to control the dues on rivers; but they do not say they are traders and freighters. They never came before the House of Lords; and the same agent acts for all the petitioners. As to the magistrates, &c., they were represented in the other House by the Corporation of Newport, who were there described as content with the clauses inserted for the protection of the trade and shipping, as well as of the town of Newport. The petitioners do not allege that they are owners of warehouses, or of riparian rights. Had the corporation petitioned, clearly you would not have heard the inhabitants also.

Mr. RICKARDS: These parties petition as traders, and the right of traders, freighters, and merchants to a *locus standi* has been admitted independently of S. O. 134.

Rodwell: A great number of persons sign who have nothing to do with shipping, i.e., hairdressers, bootmakers, tailors, naturalists, &c. Bargeowners and freighters have been refused a hearing. *Severn & Wye, &c., Bill* (Cliff. & Steph. 74.)

Mr. RICKARDS: There is a distinct allegation here applying to such of the petitioners as are shipowners.

Rodwell: But the shipowners are only a small proportion of the petitioners.

Mr. RICKARDS: Numerically; but they may be large shipowners?

Rodwell: The trade is small, and the vessels small, from 15 to 35 tons. All but the shipowners are out of Court, since the corporation of Newport quâ corporation, has accepted those clauses.

The CHAIRMAN (after consultation): The *locus standi* of the Corporation, and Chamber of Commerce of Southampton is *Disallowed*.

The *locus standi* of the Magistrates, &c., of Newport is *Allowed*.

Agent for petitioners, *Batten*.

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1872.

*. Where a Standing Order is quoted or referred to in the Reports, the numbering is that of the Standing Orders for the Session 1873.

GLASGOW AND RENFREW BRIDGE, &c. ROADS BILL.

7th March, 1872.—(Before Mr. ST. AUBYN, M.P.,
Chairman; Mr. BONHAM-CARTER; and Mr.
RICKARDS.)

Petitions of (1) the CORPORATION OF GLASGOW,
and (2) the CLYDE NAVIGATION TRUSTEES.

*Road Bill—Creation of New Trust—Continuance
of Expiring Toll—at Reduced Rate—Adjoining
Burgh—and Landowners—Public Bodies—
Corporation—Complaining of Inconvenience
arising Outside their Jurisdiction—Harbour
Trustees—Landowners—Representation—Past
Legislation—Review of.*

A bill was promoted, having for its object to amalgamate two road trusts, of which one had expired, and the other was continued from year to year; to continue for a period of twenty-one years at a reduced rate the toll now taken; and to appoint a new body of road trustees. Petitions were presented by the corporation of Glasgow, complaining, though the toll-bar lay beyond their jurisdiction, that the operation of the toll was oppressive, and that the representation conceded to them upon the trust was insufficient; also by the Clyde trustees, who would be ineligible, under Clause 5, as road trustees, though the roads passed through their lands, not being owners in their own right. The bill, as regards the formation of the new trust, professedly followed the provisions of the former road Acts:

Held, that the corporation of Glasgow were en-

titled to be heard against the bill generally; and the Clyde trustees against Clause 5.

This was a bill "for uniting and continuing the term of the Glasgow and Renfrew bridge, and the Glasgow and Three-mile House turnpike road trusts, and appointing a new body of trustees, and for other purposes."

The toll-bar lay just outside the boundary of the burgh of Glasgow, being situated at the fork of two roads traversing the burghs of Govan and Kinning Park. Of one of these roads the Act had long expired; the other was continued from year to year by the General Turnpike Continuance Act. The bill prolonged the existing toll for twenty-one years, but at a reduced rate, and constituted a new trust, modelled upon the provisions of the former Acts. The petitioners were public bodies in the vicinity of these roads, and claimed a voice in the matter.

The *locus standi* of the Glasgow corporation was objected to, because (1) no lands, rights, &c., of theirs were interfered with; (2) the petitioners were already represented, eleven of their number being *ex officio* members of the road trust; (3) the bill greatly reduced the tolls leviable; (4) none were levied upon roads within the municipal boundaries of Glasgow, over which alone petitioners had jurisdiction; (5) the petitioners did not represent the burghs either of Govan or Kinning Park; (6) they were not entitled to be heard against a continuance of past legislation; (7) there was an express provision in the bill bringing these roads under the operation of any future General Act; (8) petitioners, consistently with their jurisdiction, had no sufficient interest.

The *locus standi* of the Clyde trustees was objected to, because (1) no lands (2) or rights of theirs were interfered with, or tolls payable by them increased; (3) their only interest in these roads was that of proprietors of grounds and works adjoining; (4) the bill did not deprive them of any share in the management of the roads, and no allegation against the management was made; (5) they

did not complain of the preamble, or any provisions of the bill, and hence were not entitled to propose additions thereto; (6) according to practice, there was no sufficient ground for a hearing.

Denison, Q.C. (for corporation of Glasgow): There is no debt upon the roads, and if the aid of Parliament were not invoked, the toll would soon expire. As to Govan and Kinning Park, our interests are antagonistic to theirs, for the people of Glasgow will have to pay the toll and, besides, to maintain their own streets, receiving no contribution from the outside burghs. A general movement against toll-bars is going on in Scotland; the continuance therefore for twenty-one years of this toll amounts to a new tax. Putting eleven members of our body upon the trust, *ex officio*, gives us a right to be heard as to its constitution. And royal burghs in Scotland stand, with regard to their local affairs, upon a different footing from corporate towns in England. (Smeth. 182: Cliff. & Steph. Practice, 85.)

Simson (for Clyde trustees): The trustees to be appointed under the bill differ from those under the existing Acts. We are proprietors of valuable lands and works in the vicinity of these roads, and are interested in the maintenance of good communication with the harbour of Glasgow. We ought accordingly to have a voice in the constitution of the new trust; but clause 5, which defines the qualification of the trustees, though including all owners of property in their own right, will exclude us, as a corporation, holding under statutory powers. We are, nevertheless, the principal landowners through whose property these roads pass.

Mr. RICKARDS: Had the Clyde trustees any representative on the former trust?

Simson: They were not owners of property in the district when that trust was constituted.

Pember (in reply): The corporation are not the proper parties to petition: the streets of Glasgow are vested in the Board of Police. And even when both these bodies join in petitioning, they are not heard as to inconvenience arising beyond their own jurisdiction. (*Vale of Clyde Tramways Bill*, 1871. 2 Cliff & Steph. 137.) This is not a new trust; we merely continue the *status quo*. Persons are not entitled to complain of past legislation merely because there happens to be a bill before Parliament. (Cliff. & Steph. Practice 95.)

Mr. RICKARDS: If the *status quo* injuriously affects my interests, and of itself would shortly expire, am I not entitled to be heard against a continuance bill, and against a new lease of that which is injurious?

Pember: A case of individual grievance is hardly analogous.

Mr. RICKARDS: Supposing the corporation to have been for years past inadequately represented on the trust, and complaining ineffectually all that time, is it not a grievance to continue that state of things for twenty-one years longer?

Pember: The proper remedy for them would have been to bring in a substantive bill to alter the trust. Their present objection is like reviewing the rates of railway companies.

Mr. RICKARDS: If the rates were given to a railway company for a limited time, would not

the party subject to the rates have a right to be heard if the company applied for a renewal, when those rates were on the point of expiring?

Pember: There the person complaining would be the individual obliged to pay the rates. The corporation are represented by *ex officio* members on the trust; hence their opposition resembles that of shareholders in a company.

Denison: You have not taken that objection.

Pember: Persons going in or out of Glasgow pay the toll equally; there is accordingly no special grievance affecting the corporation. The toll-bar is outside their boundary. The case of the *Caledonian and Forth and Clyde Companies Bill*, 1867 (Cliff. & Steph. 128), is in point. If the corporation have a *locus standi* here, then anybody representing the inhabitants of any town using any road in the vicinity will have a right to be heard, whenever the road trustees come to Parliament. A bill to prolong an existing trust, and decrease tolls, is very different from a bill creating a trust and imposing new tolls. Parties cannot be heard against a mere continuance. (*Swansea Canal Transfer Bill*, 1865; Smeth. 170.) The Clyde trustees have become owners of property since the formation of the trust, and Clause 5 does not establish any new principle to their prejudice.

Simson: The former owners of the property had a right to vote. The Clyde trustees ought not to be deprived of the right to vote in respect of the same property.

Pember: At any rate that is not such an injury as will confer a *locus standi*.

The COURT (after deliberation): The *locus standi* of the Glasgow corporation is *Allowed*; that of the Clyde trustees is *Allowed* against Clause 5 (constitution of the trust).

Agents for both petitioners, *Simson & Wakeford*.

Agents for Bill, *Grahames & Wardlaw*.

SHEFFIELD CORPORATION (PAYMENT OF COSTS) BILL.

7th March, 1872.—(*Before Mr. ST. AUBYN, M.P. Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of (1) SAMUEL ROBERTS and OTHERS; (2) the SHEFFIELD WATERWORKS COMPANY.

Practice—Objections to *Locus Standi*; Service of—Upon Agents—Rule as to Time of Service—Private Bill Office—Analogy—Former Decision Followed—and Enforced—New Rule subsequently made—to meet General Convenience.

The rule of Court requires that notices of objections shall be served at the office of the Referees before five o'clock p.m., on any day upon which the House sits, and on other days before one o'clock:

held, on the authority of a case previously decided, that notices ought, by analogy, to be delivered to agents within the time they are to be delivered at the office of the Referees; and, therefore, that service upon agents after one o'clock on a Saturday, which was the last of the seven clear days, was not a good service. [*But see New Rule infra and post, p. 223.*]

Denison, Q.C. (for petitioners): The notice of objections here has not been served in time upon the agents. The printed rule requires that notice of objections shall be delivered at the office of the Referees within seven clear days of the deposit of the petition, and that such notice shall be given at the office of the Referees before five o'clock of any day on which the House sits, and before one o'clock on any day on which the House does not sit. The notice here was not served on the agents till after two o'clock on Saturday, the day on which the seven clear days expired; and, according to the decision in the *Marston and Nantlle Railway Bill* (Cliff. & Steph. 2), that is not a good service, for "by analogy" it should be governed by the same rule as service at the Referees' office.

Venables, Q.C. (for promoters): Notwithstanding Mr. Dodson's intimation in the case cited, no rule has been laid down specifying the time within which service should be made upon the agents. The printed rule is silent upon this point.

The CHAIRMAN (after deliberation): The Referees think it will be safe to adhere to the rule laid down by Mr. Dodson in the case referred to, in which full notice was given to all parties as to the future practice with regard to service on agents. The *locus standi* of the petitioners is therefore allowed.

Locus standi Allowed.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Sherwood & Co.*

*** After the decision in this case the following New Rule was issued from the office of the Referees, dated March 12, 1872:—

"It is ordered by the Chairman of Ways and Means that notices and grounds of objection in cases of *locus standi* will be deemed to have been sufficiently served upon agents, if left at the agent's office before six of the clock in the evening of any day, Sundays excepted."

GASLIGHT AND COKE COMPANY'S BILL.

8th March, 1872.—(*Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of the METROPOLITAN BOARD OF WORKS.

Gas Bill—Increase of Capital—Metropolitan Board—Jurisdiction of, as to Gas Supply—Price of Gas—Loan and Share Capital.

The *locus standi* of the Metropolitan board of works against a bill promoted by a metropolitan gas company was objected to on the ground that the bill was merely one for an increase of capital, and that, as to expenditure of capital and price of gas, consumers were sufficiently protected by existing legislation:

Held, notwithstanding, that the petitioners were entitled to be heard.

The bill was one empowering the company to raise £1,000,000 additional capital by the issue of new ordinary or preference shares, or by both these modes.

The petitioners submitted that any additional capital required should be raised by loan and not by shares, inasmuch as capital could be raised by the company on loan at 5 per cent., whereas new shares would be entitled to a dividend considerably exceeding that amount, so that the period at which the consumers of gas would be entitled to a reduction of price, or an increase of illuminating power, would be almost indefinitely postponed; and they urged that no sufficient reason was shown for the proposed addition of capital, and that if such addition were made by shares the dividend payable thereon should be limited to an amount considerably below 10 per cent.

The *locus standi* of the petitioners was objected to, because (1) they were not prejudicially affected; (2) the petition was confined to questions respecting the capital of the company upon which the petitioners had no right to be heard, as Parliament had conferred upon an auditor appointed by the Board of Trade powers (among other things) of seeing that there was no improvident outlay of capital, of disallowing items of expenditure, and of stopping the payment of dividends if necessary; (3) petitioners were not the guardians of the consumers of gas; (4) they had no property or interest prejudicially affected, nor did they allege that they were gas consumers in the promoters' district; (5) no ground or interest was alleged, entitling them to be heard.

Philbrick (for petitioners): As the local authority for the metropolis, the Metropolitan board of works have always been heard upon gas bills from 1860 to the present time: and in 1870 the Referees gave us a *locus standi* against a bill promoted by this very company for the raising of capital, precisely the same objections being made to our appearance. (2 Cliff. & Steph. 45.) Under the City of London Gas Act, 1868, and the Gaslight and Coke Company's Act of the same year, the accounts of the company are subject to a certain revision by an independent authority, at the instance of the Metropolitan board; and there are various sections authorising our interference with regard to illuminating power and price. The question of capital, of course, directly affects the price of gas. The public, therefore, have a direct interest in any application to Parliament for an increase of capital, and we, representing the public, have a right to see that the terms on which metropolitan gas companies are authorised to raise capital are fair and equitable towards consumers, and that no more capital is raised than the circumstances of the companies actually require. Here the promoters take power to raise £1,000,000 share capital, without any restriction upon the amount of dividend they may pay, except the ordinary restriction of 10 per cent. in the Gas Clauses Act. If we are not heard to protect the consumers, this will be an unopposed bill.

Denison, Q.C. (for promoters): The bill of last year, against which the petitioners were heard, embraced many other objects besides an increase of capital. For instance, it empowered the company to pay interest during construction. No precedent is shown for hearing the Metropolitan board or any other corporation against a mere bill for increase of capital. The board will not be damaged by the increase now proposed, for, under the Act of 1868, they may procure a revision of our accounts and an abatement of price, if the accounts are in any degree manipulated with a view to a higher price. The bill in no respect varies the powers which the Metropolitan board possess under the Act of 1868. It only enables us to do what we are bound to do under our Act. Having amalgamated with other companies, we are making certain works which cannot be completed without an increase of capital; but on the application of the Metropolitan board, the auditors to be appointed by the Board of Trade, under the Act of 1868, will prevent the improper expenditure of capital.

Locus standi Allowed.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Wyatt & Hoskins.*

SOUTH LONDON GAS BILL.

8th March, 1872.—(Before Mr. DODSON, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of (1) VESTRY OF ST. GILES, CAMBERWELL.

Gas Companies—Amalgamation Bill—Metropolitan Vestry—Practice—Petition—Vagueness—Apprehended Injury to Petitioners—Specific Allegations; want of—S. O. 129 (Petition to specify grounds of Objection)—Power of Amending Petition.

A metropolitan vestry petitioned against a bill for the amalgamation of two gas companies, both supplying public lamps and private consumers within the parish; and alleged generally that the bill would prove "extremely prejudicial" to the interests of the petitioners and of gas consumers. The petition was objected to (*inter alia*) on account of the absence of more specific allegations respecting the injury, if any, inflicted on the petitioners by the bill:

Held, that this objection was fatal; and *locus standi* therefore disallowed.

The bill was one "for amalgamating the South Metropolitan gas light and coke company with the Phoenix gas light and coke company, and for other purposes."

The petitioners, after setting forth the main provisions of the bill, complained that its passing would be "extremely prejudicial" to them and to gas consumers in the parish, whose interests would be sacrificed for the exclusive benefit of shareholders of the company, these shareholders being already in receipt of good dividends.

The *locus standi* of the petitioners was objected to (*inter alia*), because their grounds of objection to the bill should have been distinctly specified, as required by S. O. 129, whereas the petitioners did not attempt to show in what way their interests, or those of private consumers within their jurisdiction, would be injuriously affected.

Clerk, Q.C. (for petitioners): Camberwell parish is the most extensive in the metropolis, comprising 22,000 houses, a population of 110,000, and 4,360 acres. It is lighted by the South Metropolitan company, excepting a very small portion, which is lighted by the Phoenix and the Crystal Palace gas companies. We pay upwards of £6,000 a year to the South Metropolitan, and £400 to the Phoenix, for public lamps, at the rate of £4 and £4 10s. respectively for each lamp; while the parishioners

d. per 1,000 cubic feet to the South tan, and from 3s. 9d. to 4s. 3d. to the or gas of an inferior quality. The pub- counts of the South Metropolitan show fund of £20,000, and so favourable a position, that we may fairly expect a ble reduction in price; but the amal- of this prosperous company with the will destroy the advantage which con- ceases in the South Metropolitan dis- l perhaps result in increased rates

REARDS: It is difficult to extract any complaint from the petition, which ys that the bill will be "extremely l," but does not say in what way.

We point out the different position of companies, and say the bill will sacrifice sts of consumers for the benefit of ers. Though the petition does not istinctly, it may be inferred from the s made that if the amalgamation takes charge for gas in the South Metro- strict will be raised to its maximum.

Q.C. (for promoters): There is no ment in the petition.

No doubt the petition might have been icit; but, from the allegations made, the e raised may fairly be inferred. Under l, though petitioners are confined to nents in their petition, power is given mmittee to permit a vague petition to ed.

LAIRMAN: The Referees are of opinion e that the petition does not state suffi- ecifically any injury apprehended by mers; and the *locus standi* is therefore l.

tandi Disallowed.

or Petitioners, *Newall*.

of (2) the SOUTH EASTERN RAILWAY Y.

any—Power to Break up Streets—Rail- pprehended Interference with—Land- Compulsory Easement—General Locus

ompulsory easement is sought for over the same general *locus standi* is given etitioners as in cases where land will tually taken under the bill. Two gas anies, who proposed to amalgamate, it powers to break up streets and carry s and pipes across or under any bridge, ay, &c., for the purpose of connecting existing works. On a petition by a ay company having stations and works n the districts of both companies, the others sought to restrict the *locus* s:

Held, however, that the petitioners, as land- owners, were entitled to a general *locus standi* upon their allegations as gas con- sumers, though the S. O. did not require promoters to give them the usual notice, and no such notice had, in fact, been given.

Clause 28 of the bill empowered the amalga- mated company "to lay down, maintain, alter, and repair mains and pipes for the purpose of connecting their several existing and authorised gas works, and for such purpose from time to time to open, break up, and carry mains and pipes through, across, over or under, or by the side of, or otherwise, any street, bridge, railway, river, canal, or public place which may be necessary or convenient to open or break up, or otherwise interfere with for such purposes, doing as little damage as may be, and repairing all damage done, or making full compensation for such damage."

The petitioners alleged that they had a con- siderable length of railway, large stations, ap- proaches, offices, and premises within the dis- tricts supplied by the two amalgamating com- panies; that the powers conferred by this clause would injuriously affect them; and they also, as large consumers, urged reasons why the pro- posed amalgamation should not be permitted.

The *locus standi* of the petitioners was objected to, because (1) they can only be heard against Clause 28; (2) the bill does not alter the rates and charges leviable by the respective com- panies; (3) no advantage should be con- ferred, as suggested, upon the petitioners over other gas consumers; (4) they cannot be heard consistently with practice.

Shrubsole, Parliamentary Agent (for peti- tioners): The promoters concede our *locus standi* against Clause 28; but we claim to be heard in respect of the other allegations in our petition.

Mr. RICKARDS: Where a compulsory easement is proposed to be taken over lands, does not that give a general *locus standi*?

Denison, Q.C. (for promoters): We do not take compulsory powers to make new works. We only take the general power to break up streets and lay down pipes, and we had not even to give the petitioners the usual notice.

Shrubsole: Clause 28 authorises the promoters to carry mains over or under the railway itself.

Mr. RICKARDS: In the *St. Helen's Improve- ment Bill*, 1869, *Willis's case* (Cliff. & Steph. 64), where powers were taken to carry pipes through the land of a private landowner, he was held to be entitled to a general *locus standi*.

Locus standi Allowed.

Agent for Railway Company, *Shrubsole*.

Petitions of (3) the METROPOLITAN BOARD OF WORKS; (4) the VESTRIES OF ST. MARY, LAMBETH, AND ST. MARY, NEWINGTON; (5) WANDSWORTH DISTRICT BOARD OF WORKS; (6) PLUMSTEAD DISTRICT BOARD OF WORKS; (7) E. DRESSER ROGERS AND OTHERS.

Gas Companies — Amalgamation — Metropolitan Board — Vestries — District Boards — Concurrent jurisdiction by District Authority and Metropolitan Board — Consumers — Representation — Distinct Interest — Increase of Capital — Price of Gas — Public Lamps — Quality of Gas — Dividend — "Local authority;" Definition of — Maximum Rates for Gas — S. O. 134 (as to Municipal Authorities and Inhabitants) — Frauds upon Gas Company; to be paid out of Dividends.

The statutory right of the Metropolitan board of works to protect the interests of gas consumers, in respect of price, quality, and other specified particulars, does not exclude the vestries and district boards, or even individual consumers, from appearing against a gas bill which peculiarly affects the interests of parishes, districts, or individuals. Thus in the case of a bill promoted by two metropolitan gas companies for an amalgamation:

Held, that, allegations distinct from those of the Metropolitan board of works being made by the other petitioners, all the vestries and local boards within the districts served by the two companies, had a right to appear, as well as the Metropolitan board; and the same right was conceded to individual consumers, the *locus standi* of the vestry of their parish, however, having been previously disallowed through the want of specific allegations in their petition.

The bill sanctioned (*inter alia*) certain arrangements as to capital between the two amalgamating companies, one of these arrangements being that £100,000 additional capital should be raised by the South Metropolitan company, to bear a £10 per cent. preference dividend upon the profits of the amalgamated company.

The *locus standi* of the Metropolitan board was conceded in argument. The remaining petitioners alleged that public and private consumers in their respective districts would in many specified ways be injuriously affected by the proposed amalgamation.

The *locus standi* of the Metropolitan board was objected to, because (1) they are not injuriously affected by the bill; (2) the clauses

relating to them were voluntarily inserted in the interest of the consumer, and give large powers to the petitioners, which they do not at present possess; (3) they exercise no control at present over the promoters; (4) the clauses affecting them are mere machinery, and can be altered in Committee by substituting some other body for the petitioners, if desirable; (5) they cannot be heard consistently with practice.

The *locus standi* of the vestries of St. Mary, Lambeth, and St. Mary, Newington, was objected to, because (1) the objects of the bill are merely permissive, and no new power prejudicial to gas consumers is sought; on the contrary, obligations and restrictions, to which the company are not at present subject, are imposed entirely in the interest of the consumer; (2) petitioners represent a part only of the districts supplied by the amalgamating companies, and seek advantages not extended to other consumers; (3) very large powers are conferred upon the Metropolitan board of works as the local authority having the management of the metropolis, and therefore representing the whole of the consumers, and also as the superintending authority appointed by Parliament with respect to the purity, illuminating power, and price of gas; (4) petitioners have no separate interest, are not entitled to any special advantages, and do not raise any questions which cannot be urged by the Metropolitan board; (5) no power is sought to take lands compulsorily, erect new works, authorise increased charges for gas, increase the capital of the companies, or otherwise prejudicially affect the interest of consumers; (6) petitioners are not the local authority having the local management of the metropolis, and are not entitled to be heard in addition to the Metropolitan board; (7) they cannot be heard consistently with practice.

The *locus standi* of the Wandsworth and Plumstead district boards of works was objected to on similar grounds. The *locus standi* of E. Dresser Rogers and others was objected to on some of the foregoing grounds, and also, because (1) the purchase of gas by consumers is not compulsory; (2) the petitioners do not show that they have any interest prejudicially affected apart from the inhabitants of the district generally; (3) they do not represent the general body of consumers, and no private or special rights of theirs are affected.

Clerk, Q.C. (for the Wandsworth district board): As the local authority, we pay to the Phoenix gas company upwards of £4,500 a year for the lighting of over 900 lamps, and to the South Metropolitan company over £1,000 per annum for 250 lamps. By section 4 of the bill it is proposed to repeal (*inter alia*) section 2 of the Metropolitan Gas Act, 1860, which limits the payment of arrears of dividend to six years; and we say that if this section is repealed, the company will be able to pay arrears of dividend for any number of years. Then we show how we shall be prejudiced by the capital arrangements proposed under the bill.

Mr. RICKARDS: The Metropolitan board of works claim to be the guardians of the public, as regards the financial arrangements of the London gas companies. You claim a sort of co-ordinate jurisdiction with them in these matters?

Clerk: Yes.

Mr. RICKARDS: But both cannot be intended to exercise the same jurisdiction on behalf of the public?

Clerk: Many matters fall within the cognizance of the vestry which would not be within the cognizance of the Metropolitan board. Locally, we are far more interested than they are, for if any increased charge were made for gas we should have to pay a much larger sum for the public lighting.

Mr. RICKARDS: As consumers, you say you are interested in everything affecting price, and price may be affected by the proposed capital arrangements?

Clerk: Yes; and in the Metropolitan Gas Act, 1860, the words "local authority" are defined to mean the metropolitan board, or vestries, or district boards.

Denison, Q.C. (for promoters): For the purposes of that Act.

Clerk: The vestry are immediately affected by the bill. So also are the ratepayers whom we represent. As to the Metropolitan board, they may not interfere in this matter at all.

Mr. RICKARDS: It is as consumers, and as representatives of consumers, that you object to the provisions of the bill respecting capital?

Clerk: Yes. The Act of 1869, under which the South Metropolitan company are governed, contains distinct provisions respecting the interference of the parochial authorities, and an arbitration is provided for between the company and these authorities in certain cases. We say that the effect of amalgamation between these companies will be seriously to damage the position of consumers in the South Metropolitan company's district, as they will have immediately to pay about £14,000 a year more for their gas, with no prospect of a reduction below 3s. 6d. for many years to come; and we also say that the additional capital of the South Metropolitan is raised solely for the purpose of bringing the capitals of the two companies into a nearer ratio as regards business done, and also to justify a rise in price to 3s. 6d. We complain next of the proposed system of testing illuminating power and purity. No doubt many of the points raised by us may be raised by the Metropolitan board; but, as consumers, as representatives of the ratepayers, and as the local authority defined by the Act of 1860, we have a right to appear concurrently with the board.

Denison: I was going to contend that the Metropolitan board had only a *locus standi* against clauses. If, however, the Court thinks, after what it has heard of the bill, that the board ought to be heard against the preamble, I am quite content.

The CHAIRMAN: The Referees are of opinion that the Metropolitan board of works have a *locus standi*.

Sir Mordaunt Wells (for E. D. Rogers and others): The petitioners are consumers of gas supplied in Camberwell by the South Metropolitan company, and they have interests which cannot be represented by any public board. (*Alliance Gas Bill, ante, p. 176.*) We raise questions not raised either by the Metropolitan board or by the vestry within whose jurisdiction we

are situated. Amongst other things, we point out the omission from the bill of words introduced into the South Metropolitan Act of 1869, being the very words which Mr. Cardwell's Committee, after great deliberation, adopted as the only effectual mode of securing to consumers, from time to time, a fair and reasonable reduction of price. Since then, this provision has been inserted in every Metropolitan Gas Act. There might be a strong gas interest in both the board and the vestry antagonistic to the interests of the great body of the consumers. The parties entitled to be heard are the consumers. It is true the bill does not alter the maximum rate, but we are now charged 3s. 2d., and if the two companies do not amalgamate, we shall probably be charged only 2s. 10d., whereas under the bill we shall probably be charged the maximum of 3s. 6d. At present the South Metropolitan does not charge for meters, but under the bill they may do so, and this charge, together with the increased price of gas, would probably impose on consumers an additional tax of £13,000 a year. We also point out in our petition that the bill would repeal, by a side wind, several provisions in the South Metropolitan Company's Acts more beneficial to the public than those in the Phoenix Company's Acts, especially a clause inserted by the House itself, after the bill had passed the Committee, providing that all frauds upon the company by the company's servants should be paid out of dividends. Under S. O. 134, the Court has the power of admitting inhabitants, and the vestry of Camberwell is already excluded. The petition of the Metropolitan board does not raise the questions raised in my petition.

Mr. RICKARDS: But they petition against all the clauses, and can raise any question they please. It is not necessary to state specifically in the petition all the objections to clauses.

Wells: We have no power over the Metropolitan board, and do not know that they will raise these questions.

Mr. RICKARDS: They are the constituted authority for protecting the public.

Wells: The view of the Metropolitan board may be favourable to amalgamation, and we know there is a powerful gas interest on that board, one of the directors of the Phoenix company being a member.

Mr. RICKARDS: If they do not properly represent the parties for whose benefit they are constituted, that is a vice of the representative system.

Wells: Many questions must arise before the Committee on which the interest of consumers is distinct from that of the Metropolitan board. For example, the bill provides that upon application to the Board of Trade, either by the Metropolitan board or the company, the illuminating power and the price of gas may be revised. We ask that the power to make this application should be vested in the local authority, and not in the Metropolitan board, who pay nothing for public lighting, and therefore have no special interest in the price of gas.

Rodwell, Q.C. (for the Lambeth and Newington vestries): These two parishes are supplied by the two companies who propose to amalga-

mate, and we object to a bill under which a bad concern will be attached to a good one. For public lamps, the Lambeth vestry paid last year to the South Metropolitan company £2,770, and to the Phoenix company £5,990, while the Newington vestry paid to the South Metropolitan company £1,610, and to the Phoenix company £2,220. The Metropolitan board may be proper persons to appear with reference to the illuminating power and other matters placed under their supervision, but it is of no consequence to the board whether consumers are charged a little more or less. We, therefore, have a distinct interest. We believe that our position will be altered under the bill, and have a right to see that no burden is placed upon us which we ought not to bear.

Pembroke Stephens (for Plumstead board of works): Plumstead is a district supplied by the Phoenix company, and we contend that the amalgamation will operate to our prejudice by extending to the amalgamated company powers, privileges, and exemptions not conferred by Parliament on either of the companies at present. We also object to the proposed arrangements relative to the share capital of the amalgamated company as unjust and prejudicial to the public, and especially to gas consumers in the Phoenix company's district, and as tending to prevent or postpone a reduction in the price of gas. We are the local authority, and as such are not represented by the Metropolitan board, and have a right to appear. (*Sunderland and South Shields Water Bill*, Cliff. & Steph. 154; *Staffordshire Potteries Water Bill*, Ib. 152.) The bill is skilfully framed, and requires close study to arrive at the intentions of the promoters. To the whole of the authorised capital of the South Metropolitan company a preferential charge of 10 per cent. upon the profits of the amalgamated company is given. All the Acts of Parliament relating to either of the companies are stretched over the district of the other company; but nowhere in the bill is any one of these Acts named.

Denison (in reply): The Metropolitan board of works, by their Acts of Parliament, are the body having the local management of the metropolis, and therefore entitled to represent the gas consumers under S. O. 134 (as to municipal authorities and inhabitants). In cases where no municipal authority exists, or where corporations have not thought fit to petition, the Court may admit inhabitants, if a considerable number of them sign the petition; but the S. O. does not authorise the Court to admit inhabitants as well as those representing them. The points raised in all these petitions may be proper points to raise before a Committee. The only question is, who is the proper party to do so? There can be no advantage in raising them more than once, and the proper party here is the Metropolitan board of works. It may be that, after the amalgamation, some districts will be a little better off, and some a little worse off than they were before; but the legislation of 1868 distinctly contemplated this result. One benefit of amalgamation is equality, and the Committee of 1868 said they would do all they could to encourage amalgamation between gas companies, with a view to establish equality among consumers.

Here consumers in both districts complain that they will be worse off if amalgamation is allowed. Thus they answer each other; but even if both districts are worse off, the Metropolitan board represent both. It is true that the vestries pay for public lamps, but they are merely large consumers, and as such are represented by the Metropolitan board. As to the omission pointed out in Mr. Rogers's petition, the bill seeks to correct an obvious mistake by calculating the dividend on the actual earnings of the year, and not on the sum that may have been carried forward from the year before. The Camberwell consumers are two degrees removed from the parties really entitled to appear. The vestry have blundered in preparing their petition; but that miscarriage cannot give to Mr. Rogers and his co-petitioners a right which the vestry themselves did not possess.

The CHAIRMAN (after deliberation): The *locus standi* of all the petitioners is allowed.

Locus standi Allowed.

Agent for Metropolitan Board of Works,
Dyson & Co.

Agents for Lambeth and Newington Vestries,
Simson & Wakeford.

Agent for Wandsworth District Board, and for
E. D. Rogers and others, *Newall.*

Agent for Plumstead District Board, *Cruce.*

Agents for Bill, *Wyatt, Hoskins & Hooker.*

SOUTHWARK AND VAUXHALL WATER BILL.

8th March, 1872.—(Before Mr. DODSON, M.P.,
Chairman; Mr. BONHAM-CARTER; and Mr.
RICKARDS.)

Petition of the METROPOLITAN BOARD OF WORKS.

Practice—Notices of objection—Service of—Upon
Agents, &c.—Printed Rules—and Decisions of
the Court—Private Bill Office—Analogy.

Notices of objection are to be served upon agents within the same hours as those fixed for depositing similar notices with the Referees. Where the service was half an hour late (*i.e.*, at 5.30 p.m. on a day on which the House sat):

Held, that the service was defective, and that the silence upon the point, of rules printed by order of the Court in 1869, in no way invalidated a decision given two years previously, in which the future practice of the Court was clearly laid down.

(*Per Cur.*) If a rule be found, in practice, unnecessarily restrictive, the Referees will

hear what is to be said upon it, and will make a new rule to meet the general convenience for the future. (*Ante*, 216.)

Philbrick (for petitioners): The notices of objection were not served on our agent till half-past five o'clock on Friday, 1st March. According to the decisions in the *Carnarvon and Nantlle Bill*, 1867 (*Cliff & Steph.* 2), and the *Sheffield Corporation (Payment of Costs) Bill* (2 *Cliff. & Steph.* 216) they should have been served before five o'clock.

Venables, Q.C. (for promoters): The intimation given by the Referees in 1867 was an *obiter dictum*, for the Court did not decide in accordance with it, and the agents, accordingly, cannot be supposed to have had notice. Moreover, in the rules printed in 1869, two years later, though the hour for leaving notices at the office of the Referees was fixed, the Court apparently did not think it necessary to lay down any positive rules as to the hour at which notices should be served upon agents, as long as reasonable limits were observed. Half-past five o'clock is not unreasonably late.

The CHAIRMAN: The Referees regret that the point should have been raised in this case, for they cannot but feel that it may bear rather hardly on one of the parties. But ever since 1867, it has been the practice of the Referees to act according to the rule which was then laid down; and the point having been brought before us, we can only decide it in the same way.

Venables: I do not think that the agents generally have followed, in practice, the *obiter dictum* of 1867.

The CHAIRMAN: If the practice of requiring notice to be served on agents at too early an hour is found to be unnecessarily restrictive, there will be every disposition on the part of the Referees to hear what is to be said upon it, and to make a rule that will meet the general convenience for the future. (*And see New Rule*, p. 217.)

Venables: The objection is not so much to the time of service, as to the sudden breaking-in upon a prevailing practice, by reference to an intimation given in 1867. As a written contract supersedes any conversations that preceded it, so the printed rules in 1869 ought to supersede an *obiter dictum* of two years earlier.

The CHAIRMAN: Looking back at the decision of 1867, I think the Referees, in following the analogy of the practice with regard to deposits at the Private Bill Office, decided rightly. And now that the point is raised a second time, the same analogy holds good.

Venables: But the Referees in 1867 did not decide in accordance with their own intimation; they decided the other way.

Mr. RICKARDS: Announcing at the same time what the practice in future would be. The rules printed in 1869 were not new rules issued then for the first time but a reprint of previously existing rules; the only alteration made in them being the substitution of "one o'clock" for "two o'clock."

Locus standi Allowed.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Sherwood & Co.

BIRMINGHAM AND LICHFIELD JUNCTION RAILWAY BILL.

11th March, 1872.—(*Before Mr. St. Aubyn, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petition of the MIDLAND RAILWAY COMPANY.

Railway—Competition—New Line—Shortening Distance—Running Powers—Agreements.

This was a competition case. The bill authorized the construction of a line from the South Staffordshire (i.e., London and North Western) railway at Lichfield to the Birmingham and Sutton Coldfield branch of the North Western railway, by a company to be incorporated for that purpose. Full powers of agreement between the new company and the North Western were taken. The proposed line would have the effect of shortening the distance between Birmingham and Derby by $5\frac{1}{2}$ miles; the existing North Western route being 43 miles, and the Midland $40\frac{1}{2}$ miles in length, as compared with the new route of $37\frac{1}{2}$ miles:

Held, that the petitioners were entitled to be heard.

(*Per Cur.*) Where a new line will shorten a route by eleven miles, there must be peculiar circumstances to induce the Court to refuse a *locus standi* to a petitioning company on the ground of competition.

Bidder (for petitioners): The shortening of distance is additionally vexatious to us, as, to reach the new line, part of our system will be traversed under running powers possessed by the North Western, in whose hands the new line will obviously be. Where a proposed deviation changes the character of a line, and originates new competition, a *locus standi* is given. (*Cliff. & Steph. Practice* 64. *London and North Western Bill*, 1869; *Ib.* App. 109. *Brecon and Merthyr Bill*, 1867; *Ib.* 105.)

Littler (for promoters): The bill is promoted locally, and the North Western company petition against it. The running powers over the Midland are general, and not peculiar to this bill. In the *North Western* case cited, the distance was reduced one-third, whereas here it is hardly shortened by one-eighth. In the *Lancashire and Yorkshire Railway (New Works) Bill* (*Ante*, 175), the *locus standi* of the North Western company was refused, though the distance would be shortened by 11 miles.

Mr. RICKARDS: There must have been some peculiar circumstances in the case to warrant us

in holding that the shortening of the route by 11 miles did not give a *locus standi*.

Locus standi Allowed.

Agents for Petitioners, *Martin & Leslie.*

Agent for Bill, *Bell.*

GLASGOW CORPORATION (MUNICIPAL EXTENSIONS) BILL.

11th March, 1872.—(*Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.*)

Petitions of (1) PAROCHIAL BOARD OF THE BARONY PARISH OF GLASGOW; (2) MAGISTRATES AND COMMISSIONERS OF POLICE OF THE BURGH OF CROSSHILL.

Municipal Corporation—Extension of Municipal Boundary—Parochial Board—Local Authority—Annexation of District—Diminution of Rateable Area—Security of Money Borrowed on Rates—Magistrates, &c., of Burgh—Proposed Extension of Burghal Limits—Rival Jurisdiction—Proposed Annexation by Local Authorities of same District—Public Health (Scotland) Act, 1867—General Police and Improvement (Scotland) Act, 1862—Representation.

Practice—Petition signed "on behalf of" Local Authority, must be Presumed to be Properly Signed—Committee—Delegated Power of Petitioning—Delegata Potestas non Potest Delegari—Authority to Sign Petition—Oral Evidence of, Admitted—Ratification.

A bill promoted by the corporation of Glasgow for the extension of the municipal boundaries was opposed by the parochial board of the barony parish, as a local authority part of whose district would be annexed by the bill, on the ground that it would diminish their rateable area, and so affect the security of money already borrowed, or to be borrowed, by them upon the rates. The bill was also opposed by the magistrates, &c., of the burgh of Crosshill, who had applied to the sheriff to exercise his statutory powers of extending the limits of their burgh over the area sought to be annexed under the bill:

Held, that petitioners were both entitled to a *locus standi*, though, in the latter case, the extension of the burghal limits had only been sought for after notice was given of the bill, and the bill itself touched no portion of the existing burgh.

(*Semble*) Where two local authorities seek to extend their jurisdiction over the same area, the case is analogous to that of two railway companies applying for compulsory powers over the same piece of land, and each, therefore, is entitled to be heard against so much of the rival scheme.

A petition, purporting to be the petition of a local board constituted under specific Acts, and signed by two persons "in the name and on behalf" of that board, was objected to on the ground that it was signed without adequate authority, and was, therefore, no more than the petition of two individuals. It appeared that a public Act empowered the board to appoint committees, of whom two should be a quorum; that the two persons signing the petition had been deputed by a committee "to secure the interests of the local authority as to this matter in Parliament, with powers;" and that the committee had afterwards sanctioned and adopted the petition. It was urged that, although the committee itself might have petitioned, it could not delegate a delegated authority, and that the subsequent ratification should have been by the whole body:

Held, first, upon objection taken, that evidence might be given to show that the petition was properly signed; and, secondly, that neither the individuals signing the petition, nor the committee, had exceeded their powers. The petition, therefore, was treated as duly proceeding from the local authority.

The bill was one "to extend the municipal boundaries of the city of Glasgow, and for other purposes."

Petition (1) purported to be "the petition of the parochial board of the barony parish of Glasgow, as local authority under the Public Health (Scotland) Act, 1867, and the Public Health (Scotland) Amendment Act, 1871;" and it was "signed in the name and on behalf of the local authority by John Young, chairman, and Alexander Mackenzie." The petitioners stated that, by the bill, it was proposed to embrace within the municipal boundaries of the city of Glasgow, for municipal, police, and other purposes, considerable areas within the landward portion of the barony parish of Glasgow; that, as the local authority under the Acts mentioned, the petitioners were charged with various duties for the preservation of the public health and prevention of nuisances within the landward portion of the barony parish of Glasgow; that, for the payment of the expenses so incurred,

they were entitled to levy assessments upon the owners and occupiers of lands and heritages in such portion of the parish, as well as to borrow money on the security of such assessments; that the withdrawal from the petitioners' jurisdiction of the areas proposed to be annexed to the municipality of Glasgow would render necessary an increase in the assessments requiring to be levied over the remaining area, and would lessen the security for money now or hereafter to be borrowed; and that there was no necessity for an extension of the municipal boundary.

The magistrates, &c., of Crosshill, alleged that one of the districts which the bill proposed to annex all but surrounded their burgh, which would be most prejudicially affected by such annexation, especially in matters of police, by reason of the irregularity of the proposed boundary; that under the Act for the extension of the boundaries of burghs in Scotland, the consent of a majority of the ratepayers residing in any district proposed to be annexed was an essential condition to the annexation, but no such consent had been given here; on the contrary, that the inhabitants desired to be annexed to Crosshill; that the necessary proceedings had been adopted by the petitioners with that view under the General Police and Improvement (Scotland) Act, 1862; and that these proceedings were now pending.

The *locus standi* of the parochial board was objected to, because (1) no land or property of theirs can be taken compulsorily, (2) nor will their rights and interests be interfered with; (3) the petition is only signed by "John Young, chairman," and "Alexander McKenzie," and it is not alleged that the petition was submitted to or authorised by any meeting of the parochial board or local authority, or was signed by order of any such meeting, and in the absence of any such allegation the petition, in conformity with practice, can only be admitted as that of the parties signing, who have no right to be heard; (4) even if the petition had been duly authorised, the parochial board in question have no right to represent the ratepayers or inhabitants of that portion of the county of Lanark which the bill proposes to embrace within the municipal boundaries of Glasgow; (5) the interests of the petitioners are not distinct from those of other ratepayers, and the petition represents individual interests only; (6) petitioners are not the municipal or other authority, &c., of the barony parish, nor do they represent the inhabitants within the meaning of S. O. 134; (7) the interests of inhabitants and ratepayers, so far as such interests can be affected by the bill, are represented by other petitioners; (8) the effect of the bill on the assessable area of the parish is not a ground upon which, according to practice, petitioners can be heard; (9) they show no sufficient interest.

The *locus standi* of the magistrates, &c., of the burgh of Crosshill was objected to, because (1) no land or property of theirs can be taken by compulsion; (2) their rights and interests will not be affected; (3) the bill will interfere with no property or privileges of the burgh of Crosshill; (4, 5, 6) the allegations as to the policy of the legislation proposed are irrelevant, as the

bill does not relate to any portion of the district or burgh of Crosshill; (7) it is not alleged that the petitioners are the municipal or other authority, &c., of any town or district injuriously affected, or that the burgh of Crosshill will be so affected; (8) the petitioners have no sufficient interest.

Mundell, Q.C. (for the parochial board): The parish under our jurisdiction is very large, part of it being within and part outside the municipal boundary; and the question is, whether we, as the local authority, have not the right to oppose a scheme for taking away from the barony parish a proportion of it, representing a large and increasing assessable value. We have borrowed money for the purpose of fulfilling the statutory duties imposed upon us as the local authority. We say that the bill, by annexing part of our territory, will interfere with our discharge of those duties; and, that being so, we have a substantial *locus standi*. As to the technical objection which is raised, the 30 & 31 Vic., c. 101, provides that the local authorities therein constituted shall (section 7) respectively be bodies corporate with the usual powers; and these would include the right to petition Parliament. We have no common seal. The Act says that the local authority may appoint any committee or committees of their own body to receive notices and "to take proceedings;" and, as to these committees, it is enacted that "two shall be a quorum, unless a larger quorum be specified in their appointment." Thus, on the face of it, the petition is properly worded, and represents the board, supposing the two persons who sign it were properly appointed. In the *Glasgow Court-houses* case (Cliff. & Steph. 160) no authority had been given for the petition, but you allowed a *locus standi* because the petition had been subsequently ratified. This is a stronger case, because we can show, by the minutes of the board, that Mr. Young and Mr. Mackenzie were authorised to petition.

Clerk, Q.C. (for promoters): I object to the production of the minutes; you must deal with the petition as it stands.

Mundell: When the two gentlemen who sign the petition say that they do so in the name and on behalf of the local authority, we must, until the contrary is proved, infer that they act with proper authority; we must not assume that they have been guilty of misrepresentation, or, at least, of an abuse of the privileges of this House. If their authority is disputed, I am entitled to give evidence on the subject.

Mr. Rickards: A petition which purports to be the petition of a public body, and is signed by A. B., chairman, or otherwise, on behalf of that body, must be presumed, in the first instance, to be properly signed. If, however, objectors say they can show that the persons signing the petition had no connection with the public body, or were not authorised to sign it on behalf of that body—that, in fact, they were mere volunteers—we must go into the evidence.

[Minute-book produced, and extracts read, from which it appeared that "at a meeting of the committee of the local authority of the barony parish under the Public Health Act, 1867, Mr. Young in the chair;" a letter was

read from the inspector of the poor, stating that he had gone carefully over the bill, and making various suggestions, whereupon it was "resolved to appoint Messrs. Mackenzie and Young to secure the interests of the local authority as to this matter in Parliament, with powers." Then, after the petition had been presented, another meeting was held, Mr. Young in the chair, and the petition was set forth in the minutes, with a resolution sanctioning and adopting it.]

Mundell : It is further objected that we have no right to represent the ratepayers within the area to be annexed. Our interest is quite distinct from that of the ratepayers; and we do not claim to be heard under S. O. 134. But the bill proposes to narrow our area of taxation; and the injury thus inflicted, no matter to what extent, or the possibility of such an injury, gives us a clear right to be heard.

MacLaurin, Parliamentary Agent (for the magistrates, &c., of Crosshill) : There are three descriptions of burghs in Scotland—royal burghs, constituted by charter; Parliamentary burghs, constituted for purposes of Parliamentary representation, and also possessing municipal privileges; and burghs constituted under the Police Act (Scotland) 1862—25 & 26 Vic., c. 101. The burgh of Crosshill was formed last October under that Act, by the usual proceedings before the sheriff; and thereby the district was separated from the county, though the inhabitants continue to vote for the county. In January (under section 10 of the Act of 1862), a further application was made to the sheriff, by the police commissioners of the new burgh, to extend their boundaries and annex to Crosshill the district embraced by the bill. The magistrates of Glasgow lodged objections to this proposal, urging that it was an attempt to defeat the present bill, and that the sheriff should proceed no further with the application till the decision of Parliament. Thus the corporation of Glasgow say we are not entitled to be heard here against their bill; yet, when we go before the sheriff, they say the proper place to decide the question is before the Committee on the bill. No doubt the corporation took the first step in giving notice of the bill; but we had a right to stand on our defence, by going to the sheriff under the provisions of a public Act.

Mr. RICKARDS : The corporation of Glasgow do not propose to annex any portion of Crosshill proper?

MacLaurin : No; but the bill would prejudicially affect Crosshill by rendering the exercise of their police jurisdiction more complicated and difficult, for, within the compass of a few yards, there would be four different jurisdictions.

Clerk, Q.C. (for promoters) : As to the Crosshill petitioners, the fact that a little burgh, just created, is also seeking to annex this area, gives them no *locus standi*. No part of the burgh is touched by our bill; but, since the bill was introduced, the petitioners have applied to the sheriff to enlarge their district in this way. The inhabitants of the outside district do not petition to be annexed to Crosshill; and it is for them to say which jurisdiction they prefer.

Mr. RICKARDS : We hear nothing of the inhabitants on either side; but we find that you, by your bill, and the burgh of Crosshill under the Public Act, are trying to extend your boundaries over the same area. The question is whether, under these circumstances, the case is not analogous to the case of two railway companies coming with a bill to take the same land?

Clerk : Even in that case, if railway company A deposited plans for taking certain lands, you would not allow company B to be heard against such a bill, merely because they were of opinion that it would be convenient to them to have the same bit of land. The burgh of Crosshill only set in motion the Act of 1862 because we were in the field, and for the purpose of creating a right to a *locus standi* here. As to the parochial board, assuming for the present that the petition is properly signed, they have still no *locus standi*. The diminution of their rateable area gives to a public body no right to appear; the inhabitants are not to be rated at a higher amount than before. (*Midland Railway (Additional Powers) Bill*, 1870; 2 Cliff. & Steph. 39.)

Mr. RICKARDS : It was admitted in that case, for the sake of argument merely, that the property in the parish would be diminished in rateable value. Here a certain proportion of the rateable area is abstracted.

Clerk : Next, I contend that the petition is not the petition of the parochial board, nor authorised by the parochial board. It is signed by Alexander Mackenzie, and "John Young, chairman." He does not say of what he is chairman. Nor is he chairman of the parochial board. The body who first moved in the matter were not the parochial board, but a committee of the board. It may be that, under the Act cited, the committee might have signed the petition, but, according to the maxim *Delegata potestas non potest delegari*, the committee so appointed could not empower Mr. Young and Mr. Mackenzie to petition in their names. They are only appointed to watch the proceedings "with powers." Those words "with powers" cannot authorise two gentlemen appointed, not by the full board but by a committee, to petition Parliament, and declare that they do so on behalf of the Board. (*Great Eastern Railway Bill*, 1870; 2 Cliff. & Steph. 14.) The fact that a man says, "I sign on behalf of" somebody else, does not make it the petition of that other person or body, unless his authority is clearly shown; and here it appears that the committee have delegated their power to two individuals. Under such circumstances, the petition is the petition of those individuals; and its subsequent ratification was not by the board, but by the committee.

Mr. RICKARDS : Section 7 of the Act (30 & 31 Vic.) says:—"All acts done or proceedings taken by or against such committee, or officer, or person, shall be as valid as if they were done by or taken in the name of all the members of the local authority."

The CHAIRMAN (after deliberation) : The *locus standi* of both sets of petitioners is *Allowed*.

Agents for Parochial Board, *Connell & Hope*.

Agents for Magistrates, &c., of Crosshill, Loch & Maclaurin.

Agents for Bill, Simson & Wakeford.

Petition of (3) ANGUS TURNER.

Municipal Corporation—Town Clerk—Legal Assessor—Retirement from Office by Agreement—Provision for—Fees—Compensation—Saving Clause—Public Policy—Questions Affecting, how to be Raised—Successors in Office, Rights of—Practice—Petition—Statements not in Dispute—Evidence not Admitted to Explain.

A bill promoted by a municipal corporation to regulate the office of town clerk, but saving the rights of the present holder of that office, was opposed by the town clerk on the ground that the bill cast doubts upon his right to hold office *ad vitam aut culpam*, and that the changes contemplated by the bill would be inexpedient on public grounds, and injurious to future town clerks:

Held, that as the individual interest of the petitioner appeared to be sufficiently guarded by the bill, he could not be heard as the representative of the public, or as protector of the interests of his successors; and *locus standi* therefore disallowed.

The rule of the Referees is to accept the statements in a petition; and if a dispute arises on a matter of fact, to resort to evidence. But where a petition contains allegations which are not in dispute, the Court will not admit evidence merely to explain or justify those allegations.

The bill also proposed to regulate the office of town-clerk of Glasgow, "subject to the interests, if any, of Angus Turner, presently town-clerk;" and it provided that every person appointed to the office after Mr. Turner ceased to hold it, should be paid a salary of not less than £2,500 a year, in lieu of all fees and emoluments. It further provided that the corporation might agree with Mr. Turner for his retirement from the office of town-clerk on such retiring allowance as might be agreed on. Then there was a saving clause: "Nothing in this Act contained shall in any way extend to or prejudicially affect or impair the rights and interests of the corporation on the one hand, or of the said Angus Turner on the other hand, in or in relation to the office of town-clerk while the said Angus Turner shall continue in office."

The petitioner alleged that the bill would be highly detrimental to him individually, and on public grounds would also be inexpedient, as it would entirely subvert the legal position, tenure, and character of the office of town-clerk and legal assessor, rendering the holders of an office, which required the utmost independence, practi-

cally subservient to the will and pleasure of a fluctuating body—the town council. The petitioner further alleged that while the bill professedly reserved his rights, the insertion of the words, "if any," in the preamble, most unwarrantably raised a doubt upon the decisions of the highest legal authorities, that his right to hold the office *ad vitam aut culpam* was indefeasible.

The *locus standi* of Angus Turner was objected to, because (1 and 2) no rights, property, or interests of the petitioner will be interfered with; on the contrary, the bill expressly saves his rights; (3 and 4) the petitioner cannot be heard in support of allegations that the bill will affect the rights, position, tenure and interests of other persons, who may hereafter be appointed to the office of town clerk, and has no right to appear as the protector of such interests; (5) he has no other interest entitling him to appear.

Granville Somerset, Q.C. (for petitioner): I propose to call Mr. Turner to describe his position as town clerk, and as the holder of other offices in connection with that appointment.

Clerk, Q.C. (for promoters): We admit that Mr. Turner, as he sets out in his petition, is town clerk of Glasgow; that the office he holds is held *ad vitam aut culpam*; and that he has held that office for 40 years. The bill does not seek to interfere with Mr. Turner in the slightest degree; it only provides for what is to take place after Mr. Turner's death, or on his surrender of his office.

Mr. RICKARDS: The rule of the Referees is to accept the statements in the petition; but if a dispute arises on a matter of fact as to the character in which the petitioner claims to appear, or otherwise, we resort to evidence. Here, however, you have laid no foundation for giving such evidence, for as yet there is no fact in dispute?

Somerset: The bill regulates the office of town clerk, subject to the interests, "if any," of Mr. Turner. Those words throw a doubt upon his position. Then, in their notice of objections, the promoters say they intend to object to the *locus standi* of Mr. Turner, town clerk, "styling himself the legal or judicial assessor of the city of Glasgow." These words again imply that he has no right to the office.

Clerk: If he is legal assessor, the bill does not deprive him of the office; if he is not, the bill cannot affect him.

Mr. RICKARDS: The promoters do not raise the issue whether Mr. Turner does, or does not, hold this appointment. They do not say, "falsely styling himself legal assessor;" and the bill does not appear to touch the office.

Somerset: We say it does, and I can only properly explain how it does by calling Mr. Turner. The office of legal assessor is similar to that of a recorder in England. Last year, between 400 and 500 civil cases were tried before Mr. Turner, and the petitioner says that, in the public interests, it is inexpedient that such a judge should be dependent upon the Town Council, as he would be under the bill, instead of being appointed for life, as Mr. Turner now is. No one can raise that question.

if Mr. Turner is not allowed to go before the Committee, because the promoters of the bill are the representatives of the ratepayers, and the ratepayers cannot be heard against the corporation.

Mr. RICKARDS: I do not think we have anything to do with the scheme proposed by the bill for the re-constitution of this office. The only thing we have to do with is, whether Mr. Turner's personal and individual rights are about to be interfered with. It may be desirable that the whole merits of the bill should be elucidated before the Committee, but the narrow question here is, whether Mr. Turner is the proper person to raise these public issues?

Somerset: No other person than Mr. Turner can do so.

Mr. RICKARDS: That may be, and Mr. Turner may be the most competent man to show a Committee that the bill is an impolitic one, but still that does not give him a *locus standi*.

Somerset: Confining myself, then, to the effect of the bill on Mr. Turner, individually, I say that while at present he confessedly holds his office *ad vitam aut culpam*, the words "if any," would raise a doubt in case litigation occurred hereafter, between the town council and the petitioner. Further, if the bill passes, Mr. Turner will be injuriously affected, for he will be liable to do additional work; the mode of remunerating him may be altered; and, in the event of an arbitration, he might get no compensation, except for the office of town clerk, the fact being that he holds many other offices. At all events, there is sufficient doubt as to the effect of the bill on these points, to entitle the petitioner to be heard. I ask for a general *locus standi*; but, at any rate, Mr. Turner is entitled to a limited *locus standi*, to see that the saving clause properly protects him.

Mr. RICKARDS: Does not Mr. Turner hold the key of the position? The corporation can only agree with him for his retirement; so that, unless they offer him what he thinks a sufficient compensation for all his emoluments, he may refuse to retire from his office.

Clerk (in reply): There is nothing in the bill to interfere with the payment of fees to Mr. Turner, nor does the bill require him to account for any fees; but when Mr. Turner ceases to be town clerk, then, and then only, the new rules will apply. The petitioner need not retire from any of his offices, except by agreement; and the saving clause makes it perfectly clear that no fresh duty can be cast upon him. He has no right to represent the public, or his successors in the office.

The CHAIRMAN: The *locus standi* of Mr. Angus Turner is *Disallowed*.

Agent for petitioner, *Spofforth*.

CLEVELAND EXTENSION MINERAL RAILWAY BILL.

13th March, 1872.—(Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of the WHITBY, REDCAR, AND MIDDLESBROUGH UNION RAILWAY COMPANY.

Competition—by joining Existing Lines—New Route—Mineral—and Seaside Railways.

(*Per. Cur.*) Must it not be presumed, when railways are proposed, that there will be some traffic to go by them?

This was a case of competition. The proposed line began at a point on the Saltburn extension branch of the North Eastern railway, and ran into another branch of the North Eastern railway, called the North Yorkshire and Cleveland, where it communicated with one of the main lines to Whitby of that company. It was promoted ostensibly to afford facilities for working the ironstone of the district, but power was also taken to carry passengers.

The petitioners' line of railway, nearly completed, was from Whitby to Lofthouse, where it joined the Saltburn extension branch of the North Eastern, and so afforded a communication with Saltburn, Redcar, and Middlesbrough. Both lines began and ended at points in the North Eastern system, and the distance from Middlesbrough to Whitby by either route was about the same.

Horace Lloyd, Q.C. (for petitioners): Where a proposed line, though it does not touch the railways of the petitioners, forms, by joining other lines, a competing route, the *locus standi* has been allowed. (*Llantrissant and Taff Vale Bill, 1865; Smeth. 145.*)

Little (for promoters): There is a line uniting seaside places; ours is an inland railway for mineral traffic, though, necessarily, villages spring up where ironstone is worked. To lines running in opposite directions, a *locus standi* is refused. (*Merionethshire Railway Bill, 1871; ante, 182.*) No existing traffic has been shown between Middlesbrough and Whitby.

Mr. RICKARDS: Must we not assume, where railways are proposed, that there will be some traffic to go by them?

Little: At Whitby the petitioners already compete with the North Eastern.

Locus standi Allowed.

Agents for Bill, *Wyatt & Co.*

Agent for Petitioners, *Bell.*

TH AND LINCOLN RAILWAY BILL.

18th, 1872.—(Before Mr. DODSON, M.P.; Mr. ST. AUBYN, M.P.; and Mr. ARDS.)

of the MANCHESTER, SHEFFIELD, and LINCOLN RAILWAY COMPANY.

Competition—Revival of Powers—De-
Confirmation of Former Agreement—
ing of Distance.

was also a competition case. A line between and Lincoln, 20 miles 7 furlongs in length, was sanctioned in 1866, but the powers had . The bill proposed to revive the powers ing a railway between, or nearly between, ne points, substituting, however, a de- line for 20 miles 6 furlongs of the dis- A working agreement with the Great n company, scheduled to the original s confirmed by the bill, and made appli- the new line.

petitioners contended that traffic from the l districts, intended for Great Grimsby, of following its present course, along the Easen branch of their railway, would, by r line, be carried on to the East Lincoln- ranch of the Great Northern railway, and rimaby—a distance of 41 miles against 45 xisting route.

locus standi of the petitioners was ob- o, because (1) the necessity for a railway n Louth and Lincoln had been already l by Parliament; (2, 3, and 4) the line d was a local line, and the petitioners traffic, running powers, or property in the which it traversed; (5) the petitioners w their petition against the Act of 1866, bjections taken, thereby admitting that d no locus standi.

r discussion, Sargood, Serjt., being for , and Lloyd, Q.C., for the petitioners.]

s standi Allowed.

it for Bill, Walker.

its for Petitioners, Wyatt & Co.

LEY LOCAL BOARD (No. 2) BILL.

larch, 1872.—(Before Mr. DODSON, M.P., rman; Mr. ST. AUBYN, M.P.; and Mr. ARDS.)

Petition of the INCE LOCAL BOARD.

orks—Local Boards—Previous Act ob- d by—Adjoining Districts—Permissive ly Authorised—Effect of Permissive Clause derground Water—Pumping Station— uit—Public Roads—Easement in—In-

terference with—and with Pipes already laid —Easement Distinguished from Ownership or Occupation—Locus Standi—Practice

The local board of Hindley pronounced a bill for the supply of their district with water, drawn from underground sources at a con- siderable distance, the pipes being laid in the public roads. The Ince local board opposed the bill, having obtained an Act of a similar character the year previously, with power to sell surplus water by agreement outside their district, and having made considerable progress with their works. It was asserted, but not admitted, that the Hindley local board were responsible for the insertion, or retention, of this agreement clause in the Act of 1871; and that the Ince local board had incurred extra expense in making provision for the supply of Hindley with water. Both lines of pipes would be laid in the same roads for about two miles; and the pro- motors were willing to concede a locus standi limited to the question of inter- ference. The petitioners claimed a general locus standi.

Held, that they were only entitled to be heard against so much of the works clause as authorised interference with their mains or pipes; that the abstraction of underground water could not be gone into; and that an easement over public roads, for the purpose of laying down pipes under statutory powers, was not such an ownership or occupation of land as conferred the right to a general locus standi.

The bill was one to enable the Hindley local board, in the county of Lancaster, to purchase gasworks, to erect waterworks, and to confer other powers in relation to gas and water on the said local board.

The petitioners, who were the local board of Ince-in-Makerfield, an adjoining district, com- plained that the bill would authorise the pro- motors to make and maintain reservoirs, a well, and pumping station, and an aqueduct, conduit, or line of pipes, passing through various town- ships, and among them that of Ince, which would thereby be injuriously affected. By the Ince Water Act, 1871, petitioners had been authorised to sink wells, and similarly to bring water from a distance for the supply of their township; and in that Act, Clause 39 had been inserted, as they alleged, at the instance of the Hindley Local Board, enabling petitioners to supply the town- ship of Hindley with water. Since that Act passed, the works had been vigorously prose-

cuted upon a scale calculated to include a supply of water to Hindley; and negotiations for such a supply had been going forward, without, however, resulting in any actual agreement. The petition went on to say:—"The Hindley local board propose by the bill to sink their well, and erect their pumping station in the same bed of red sandstone, at a distance of only 2,100 yards or thereabouts to the south of, and in the same sandstone stratum as the pumping station of your petitioners, and to run their main pipes along, and in some places across and over, or under, the mains of your petitioners, for a distance of more than two miles." Notice had been given to the petitioners of the proposal to construct these works, which, they contended, must prejudicially interfere with their works, endanger the bursting of pipes from the subsidence of soil, and thereby increase the statutory liability of petitioners to indemnify coalowners, over whose property the pipes passed.

The *locus standi* of the petitioners was objected to, because (1) no land of theirs was taken, and no property, right, &c., of theirs injuriously affected; (2) the parts of their district in respect of which injury was alleged were roads and highways repaired by the county of Lancaster, and not by the petitioners, and the promoters had other means of access than by these roads; (3) it was not the fact that section 39 of the Ince Water Act had been inserted at the instance of the Hindley local board; (4) the petitioners were not entitled to be heard as to the alleged abstraction of underground water, (5) as to the possible injury of third parties, i.e., coalowners who did not complain, or (6) as to matters affecting the township of Hindley, in which they had no interest; (7) no sufficient ground of objection was shown, and petitioners' only right to a hearing was to obtain a clause protecting their mains and pipes where laid in the same roads as those of the promoters, which clause the promoters were willing to concede.

Bidder (for petitioners): Abstraction of underground water, by itself, does not give a *locus standi* (Cliff and Steph., *Practice* 21); but, in this case, there are special circumstances entitling us to be heard. Our pipes admittedly are to be interfered with; and in the Act of last year this clause was inserted: "The local board may, from time to time, on terms mutually agreed on, supply water in bulk for domestic or other purposes, at places beyond the water limits, provided the same can be supplied without prejudice to a full supply for the inhabitants within the water limits." Though the promoters deny that this clause was inserted at their instance, the fact can be proved.

Pembroke Stephens (for promoters): Last year's Act, as introduced, took power to supply the Hindley local board, by name, but that power was struck out. Clause 39 was not inserted at our instance.

Bidder: The chairman of the Hindley board distinctly stated, in his evidence, that they desired the clause to stand.

Mr. RICKARDS: Clause 39 is but a general

clause, in a form frequently adopted. There is no specific mention of the Hindley local board.

The CHAIRMAN: Is there any agreement between the two boards?

Bidder: No written agreement. But in the agreement with the landowner, scheduled to last year's Act, special provision was made for a water supply to Hindley.

Mr. RICKARDS: The Hindley board, apparently, were no parties to that agreement.

The CHAIRMAN: At the time the Ince Act passed, it was evidently in contemplation that the Ince board should supply the Hindley board with water, if desired. Is that to estop the Hindley local board from proceeding to construct waterworks of their own?

Bidder: It was something more than contemplation. According to the minutes of evidence, Clause 39 would not form part of the Act if it had not been for the wish of the Hindley board. On a question of good faith, the history of this clause becomes material.

Mr. RICKARDS: A specific agreement that the Hindley local board would take water from Ince, would have been different. But all you point to is a general clause, that might equally apply to Hindley or any other adjoining parish.

Stephens: The petitioners are trying to read a permissive clause as if it gave them exclusive powers over our district.

Mr. RICKARDS: Or, by going into the history of the clause, as appearing in the minutes, to make out a specific agreement by which the Hindley local board are to be bound.

Bidder: It is not such an agreement, probably, as would sustain an action. But in placing ourselves in a position to carry out the agreement, we have incurred expenditure, which the Hindley board now are about to render useless. We have put in the junctions for supplying Hindley.

Stephens: Since our bill was introduced, and not at our request. They are merely junctions, without branch pipes.

Bidder: We were obliged to put them in when laying our pipes; and negotiations were going on at the time. We also complain of interference with our pipes for a distance of two miles.

Stephens: We do not dispute your *locus standi* on that point.

Bidder: Then I claim a general *locus*. We have a property in the pipes and an easement in the land; and the interference with us is much more substantial than with the landowner's post. (Cliff. & Steph. 62.)

Mr. RICKARDS: The post would be in the man's own field. Having an easement is not the same as having the land; it is a right in somebody else's land.

Bidder: The same might be said of an occupier, whose right is never denied. Rights of shooting have been deemed sufficient to support a *locus standi*. (*Bradford Water Bill*, 1869; *Petition of W. Ferrand*. Cliff. & Steph. 41.) An occupier has merely the right of user.

Mr. RICKARDS: For a limited time, the occupier has the exclusive dominion of the land; and his interest has been considered by Parlia-

ment to rest on the same footing as that of an owner, *quod locus standi*.

Bidder: We have exclusive dominion over so much of the land as our pipes occupy, not for a limited time, but in perpetuity. We have a Parliamentary right to put the pipes there, and to keep them there; and nobody else can remove them. Our position is stronger than that of a tenant, or an occupier.

Mr. RICKARDS: Can you show, by reference to any case, that an easement gives a landowner's *locus*? If so, your right is clear.

Bidder: The point may not have arisen before. We are also exposed under the bill to the consequences which may arise, in a mineral district, from the bursting of pipes.

The CHAIRMAN: The *locus standi* conceded you as to interference with pipes, would cover that point.

Bidder: It ought to be as to interference with "works," otherwise, it may be said, the pumping-station and well do not, by themselves, interfere with the pipes, though the conduit connected with them undoubtedly does.

Stephens: The word "works" would admit the petitioners as to abstraction of underground water.

Bidder: And properly so, if the works, which are to raise the underground water, lead to the possible destruction of our pipes.

Mr. RICKARDS: The *locus standi* ought to apply to any work which may, by its consequences, interfere with the pipes; but we must take care to exclude the abstraction of underground water.

The CHAIRMAN (after consideration): The *locus standi* of the petitioners is *Allowed* against so much of Clause 29 (power to make waterworks) as authorises interference with the mains or pipes of the Ince local board.

Agent for Bill, S. H. Lewin.

Agents for Petitioner, Wyatt & Co.

GREAT EASTERN RAILWAY BILL.

18th March, 1872.—(Before Mr. DODSON, M.P., Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.)

Petition of (1) CORPORATION OF LONDON; (2) COMMISSIONERS OF SEWERS OF THE CITY OF LONDON.

Railway—Extension of Time Bill—Delay in Executing Works—Closing of Street—Interference with Traffic—Corporation of London—Commissioners of Sewers—Street Authority—Ownership of Soil of Streets; Absence of Allegation as to—Practice—Locus Standi Limited; to parts of Bill, not of Petition—Separate Petitions, containing Similar Allegations—Matter sub judice.

Against a bill promoted by a railway company to extend the time for completing a metro-

politan line, possessing a city station, separate petitions were presented by the corporation of London and by the commissioners of sewers, containing substantially the same allegations—namely, that public inconvenience would result if the time were extended, and that the company should not be allowed to close a certain street within the city. The promoters conceded the right of the commissioners of sewers to be heard against the extension of time, but urged that, as the bill made no mention of the street, and as authority to close it was given by the original Act, neither set of petitioners could be heard to re-open this question, especially as the matter was *sub judice*:

Held, that, as the bill contained no reference to the street, and as it was the general practice of the Court to restrict a *locus standi*, not to particular parts of a petition, but to parts of the bill, the *locus standi* here could not be limited so as to exclude the question of the street.

Upon objection taken to the appearance of the corporation, as well as the commissioners of sewers, upon separate petitions against a bill affecting streets within the city, it was urged in argument that the corporation were entitled to appear as owners of the soil of streets, &c., under grant from the Crown, and the commissioners of sewers as the street authority:

Held, that both petitioners had a right to a *locus standi*, though their petitions contained substantially the same allegations, and the corporation did not petition as owners of the soil of streets.

The bill was one to extend the time for completing a railway authorised in 1864, the station of which was to be constructed in the city of London, on a site which involved the closing of Sun Street. Both petitioners opposed the extension of time and the closing of the street—the corporation, as the local authority, "having the management of the city of London;" the commissioners of sewers as the street authority.

The *locus standi* of the corporation of London, "so far as related to the street called Sun Street," was objected to, because (1) the bill gives no power relating to Sun Street, and that part of the petition is entirely foreign to the objects and scope of the bill; (2) the petitioners have not vested in them the control and management of the streets within the city of London, and are not the proper authority to apply to Parliament for imposing restrictions upon the promoters with reference to Sun Street; the authorities

having the control of the streets, viz., the commissioners of sewers, have a petition of their own on the same matters; (3) the disputes arising out of the powers conferred upon the promoters with reference to Sun Street are the subject of litigation in the superior courts, and those proceedings ought not to be superseded or prejudiced by means of an irregular application for legislative interference on the part of the petitioners; (4) a bill promoted by the commissioners of sewers is pending in Parliament for settling the existing disputes between the promoters and the city authorities with reference to Sun Street, and the subject matter of the petition will come regularly before Parliament upon the hearing of that bill.

The *locus standi* of the commissioners of sewers was objected to on the same grounds, omitting objection 2.

Corrie (for both petitioners): The promoters do not object to our appearance against the extension of time; but they claim, under their Act of 1864, a right, which we deny, to stop up an important thoroughfare in the city of London, and we say that a clause should be inserted in their bill to remove all doubt on this subject.

Round (for promoters): The bill makes no specific mention of Sun Street. Why, then, should the petitioners be allowed to ask for any clause on the subject? They promoted a bill in the House of Lords asking Parliament to repeal any power of stopping up the street which might be given to us by the Act of 1864; but the bill was rejected; the House of Lords would not even go into the merits. The right of closing Sun Street was given us in 1864. We make no further claim in the bill, our contention being that we have the right already.

The CHAIRMAN: Whatever your right over Sun Street may be, this is a bill to extend the time during which you may exercise the right, and in your objections you do not deny that the petitioners are entitled to oppose the extension of time for construction of works.

Round: The petitioners may be entitled to show that we have been remiss in executing our works, and that inconvenience will result to the public in their use of the thoroughfares, if our powers are prolonged. But they have no right to go into a question not touched by the bill.

Mr. RICKARDS: Is not everything touched by the bill? If the bill does not pass, all the powers in the Act of 1864 will lapse, including the power to deal with Sun Street.

Round: The corporation have got in the Court of Chancery an interim injunction to prevent us from interfering with Sun Street, and the proceedings in the cause are now pending. That is one of the remedies the corporation have elected to take; but they are now seeking to anticipate judgment by raising before the Committee a matter which is *sub judice*. No doubt they may make out the best case they can as to our dilatoriness in the construction of works, but they ought not to be allowed to raise *de novo* our right to close Sun Street.

Mr. RICKARDS: How do you propose that we should limit the *locus standi*, so as to exclude the question of Sun Street?

Round: I ask you to say, "Locus standi dis-

allowed as to so much of the petition as relates to stopping up Sun Street."

Mr. RICKARDS: We do not usually limit a *locus standi* to particular parts of the petition. We limit it to parts of the bill, leaving it to the Committee to restrict petitioners as to the topics they shall bring forward.

The CHAIRMAN: We cannot say to the Committee, "We give a *locus standi*, but you cannot hear anything about Sun Street."

Corrie: The case of the commissioners of sewers is stronger than that of the corporation.

Round: The same points are raised in both petitions, and it is not the practice of the Court to allow two sets of petitioners to appear, when substantially the same allegations are made by both. The commissioners of sewers are the local authority, exercising control over the streets, and they, with the cognizance of the corporation, began the proceedings in Chancery.

Corrie: The commissioners have the management of the streets; the corporation has the regulation and management of the city generally; and the traffic will be thrown into confusion by the proposal to prolong, for an additional three years, the time for executing these works. Moreover, while the commissioners of sewers control the surface of the streets, the corporation are owners of the soil of the streets. We have grants from the Crown to this effect.

Mr. RICKARDS: If the corporation are owners of the soil, and the commissioners control the streets, both may be entitled to appear.

Round: In their petition the corporation do not allege that they are owners of the soil.

The CHAIRMAN: The *locus standi* of the corporation and of the commissioners of sewers is allowed.

Locus standi Allowed.

Agent for Petitioners, *Corrie*.

Agents for Bill, *Sherwood & Co.*

BIRMINGHAM SEWERAGE BILL.

22nd March, 1872.—(Before Mr. WYNN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petitions of (1) EDWIN CHESHIRE; (2) BERKELEY PLANTAGENET G. C. NOEL.

Sewer Authority—Sanitary Condition of Borough—Injunction—Sewerage Scheme—Compulsory Taking of Lands—Adjacent Residence—Overlooking Sewage Lands—Intermediate Stream—Right of Fishing in—Bed of River—Alteration in—Water Level—Riparian Owners—Purchase of Millowners' Rights—Lord of Manor—Joint Tenant—School Trustees—Boundary Road—Landowners "Injurious Affected"—Gasworks—Three hundred yards Limit—Assent to Bill—Green and Withdrawn—Flow of

Sewage into Rivers—Powers, as to, of Local Authorities.

A corporation, being compelled by injunction to alter their existing system of drainage, promoted a bill authorising them to convey sewage to a point fourteen miles from the borough, and there to acquire lands for purposes of sewage utilization and manufacture, on the banks of the Tame. The bill was opposed by the tenant of a house and lands on the opposite side of the river, who urged that, by the sewage operations, his house would be rendered uninhabitable, and also that he would be deprived of his right of fishing in the Tame. The bill authorised the corporation to purchase existing millowners' rights along the river, to the middle of which the limits of deviation extended; but did not in terms authorise any interference with the bed of the river or flow of the stream. It was alleged that the sewage of the borough, which now flowed into the Tame in its natural state, would, under the bill, be purified before it reached that river:

Held, that the petitioner had no *locus standi*.

The same bill was opposed by a landowner, whose property for a considerable distance adjoined the "sewage lands" of the corporation. The plans showed that it was intended to construct three sewage tanks, one in close proximity to a road dividing the "sewage lands" from those of the petitioner; but no portion of his land was actually taken, though the limits of deviation extended to the centre of this road. Notice had also been served on the petitioner as "lord of the manor of Cliff Hall," through a portion of which the works of the promoters would pass; and, likewise as a trustee, with others, of a school-house, to be taken under the powers of the bill. The other trustees of the school, however, did not petition; and the landowner failed to show how, *quâ* lord of the manor, he would be affected by the bill. In answer to the notices, and before seeing the bill, he had given an assent in writing, but subsequently lodged a hostile petition:

Held, that this petitioner also had no *locus standi*.

The bill was one "for extending the powers vested in the corporation of Birmingham, as the sewer authority, of the borough, for making

further provision for the improvement of the sanitary condition of the borough, and for other purposes." Power was taken, for the purposes of the bill, to acquire compulsorily a large quantity of land, as to which Clause 17 provided:—

"In relation to the sewage lands, the corporation shall have the following powers—*viz.*, to use those lands for the purpose of thereon receiving, collecting, storing, depositing, precipitating, filtering, disinfecting, deodorising, defecating, distributing, applying to purposes of agriculture, irrigation or fertilization, or other like purposes, or otherwise utilizing or dealing with sewage, and sewage matter, as they see fit; to make, lay down, maintain, renew, improve, enlarge, cleanse, and use, from time to time, openings in their conduits and other works and apparatus, for supplying sewage to occupiers of those lands, for irrigation and fertilization thereof, or for appropriating and using sewage, for irrigation and fertilization thereof; to make, provide, lay down, maintain, renew, improve, enlarge, cleanse, and use, from time to time, on those lands, such tanks, receptacles, pipes, pumps, machinery and apparatus, in such manner, and in such places, as they think requisite for any of the purposes aforesaid; to appropriate and use sewage for irrigation and fertilization of those lands; to let any lands acquired by them, under this Act, or applicable for purposes thereof, for such terms, and at such yearly or other rents, and subject to such provisions and restrictions, as they think fit; to sell or dispose of any lands acquired by them under this Act, with or without a right to sewage, in such manner, to such persons, and on such terms and conditions, as they think fit."

Mr. Chesshire described himself in his petition as of Cliff Hall, in the county of Warwick, held under an agreement dated 25th of September, 1871, entitling him to an option, exercisable at any time prior to the 25th March, 1875, of claiming from Sir Robert Peel, a lease of the house and twenty-six acres of land attached, for fourteen or seven years, from the 25th day of March, 1875. Petitioner had been at some expense in rendering the premises suitable for a permanent residence for his family, and if compelled to leave at short notice, would remain liable to several onerous covenants contained in the agreement. His residence lay on the east side, and within a few yards of the river Tame, towards which the principal windows of the house looked; and the land to be acquired, under the bill, by the corporation, nearly 1,000 acres in extent, all lay within view, and occupied the whole frontage of the river Tame, opposite the house for a considerable distance. The petitioner was advised that the effluvia arising from the proposed sewage operations upon these lands would take away from Cliff Hall its advantages as a place of residence, and render it insalubrious and uninhabitable. He further objected to the power sought to lower the bed of the Tame to obtain a better drainage from those lands, because he had, under the agreement, "an easement and right of fishery in the said river," and the proposed lowering of the bed "would cause a large quantity of solid excreta and other refuse to settle on the sides and in the bed of

the river, the emanations from which would be of a character most offensive and injurious to health, and the fish therein would be destroyed, and the petitioner's right of fishery rendered useless." Injunctions had been obtained against the corporation in respect of injuries sustained from their present works and farm at Saltley, near Birmingham, by persons living nearly two miles from those works, whereas the petitioner's property was close to the lands proposed to be taken by the bill.

The *locus standi* of Mr. Chesshire was objected to, because (1) no lands or property of his were taken, interfered with, or prejudicially affected, under the bill; and (2) no rights or interests of his were in any way altered or affected; (3) the apprehended injury from effluvia was unfounded; but, if true, would not entitle him to be heard; (4) he was not entitled to any part of the bed of the river Tame; (5) there was no provision in the bill for lowering the bed of the river Tame, and after the construction of the proposed works the waters would be much purer than they now were; (6) petitioner's interest in Cliff Hall was too small, and might cease before the works were completed; moreover, the owner in fee of Cliff Hall had petitioned, and was entitled (in respect of other lands) to be heard; (7) no sufficient ground of objection to the bill, according to practice, was shown by the petition.

The other petitioner, Mr. Noel, was stated to be the owner of a valuable estate of 1,600 acres in the parishes of Wisham, Curdworth, Sutton, Middleton, Kingsbury, and Minworth, in the county of Warwick, and of a mansion thereon, Moxhull Hall, in which he resided. The sewage lands proposed to be acquired by the corporation were in the vicinity of his estate and residence, and for a considerable distance adjoined his property. Mr. Noel further described himself as "joint owner (with others) of the manor of Curdworth, through which some of the works to be authorized by the bill are to be made;" and also as "joint-owner (with others) of a school-house and land in Lea Marston, which may be compulsorily taken under the powers of the bill if passed."

The *locus standi* of Mr. Noel was objected to, because (1) he had, in writing, assented to the undertaking proposed to be authorised by the bill; (2) it contained no provisions under which any lands or property of his would be taken or interfered with; (3) he was not entitled to any rights in, over, or under the lands in the manor of Curdworth proposed to be taken; (4) he did not allege that he was lord, or one of the lords of the manor of Curdworth; (5) if interested at all in the manor of Curdworth, it was as one of several joint tenants; but it did not appear that he had signed the petition on behalf of himself and his co-tenants or co-owners, and for anything that appeared, his co-tenants or co-owners might dissent from his opposition; (6) the school-house and land in Lea Marston, of which petitioner described himself as joint owner with others, was held by them as trustees; and again, his co-trustees might not be assenting parties to the opposition; (7) the petitioner was *not entitled in fee to the lands of which he*

claimed to be owner; (8) the apprehended injury from effluvia was unfounded, but, if true, would not entitle him to be heard; (9) no adequate ground for a hearing was disclosed, according to practice.

Round (for Mr. Chesshire): I admit that the corporation of Birmingham are justified in coming to Parliament with a scheme, the *onus* of providing a more efficient drainage system for the town having been thrown upon them by legal proceedings. But they now propose to carry the sewage a distance of fourteen miles, and to discharge it, after filtration, into the river Tame, exactly opposite my client's property. They have included, within the limits of deviation, one-half the bed of the river, but they must necessarily affect the water over the whole. The bill shows the nature of the operation proposed to be carried on.

Mr. RICKARDS: Does the land which the petitioner occupies come within the definition of "sewage lands?"

Round: No; but it comes down to the Tame exactly opposite to the "sewage lands." There is merely the river between us, and the works to be constructed. It is difficult to know exactly what they are going to do with this river; but they obviously mean to lower the water level.

Michael (for promoters): We take no power to affect the bed of the river; all we do is to acquire mills now in the possession of mill-owners.

Round: Having the mills, they will be able to lower the level of the water.

Michael: Not in any different way from that in which it may be done now; the millowners' powers will simply be transferred to us.

The CHAIRMAN: Being owners of the mills, might you not destroy the dam, and so lower the level?

Michael: Only if the owner of the mill can do the same thing now; no new right over the river is conferred upon us.

Round: Seeing that the right of claiming the lease is optional with us, I have a right to treat our interest as one of fourteen years from 1875, i.e., seventeen years. We stand in the shoes of the freeholder, Sir Robert Peel, who has a right to the soil of the river half way across. According to *Blackstone* (1 *Stephen's Commentaries*, 5th edition, 679), the right of fishing would presumably belong to the owners of lands on either side; but the agreement expressly gives to my client "the right to fish in the river Tame, where the said lands abut on the river Tame."

Michael: The petition uses the words "right of fishery," which have quite a different meaning.

The CHAIRMAN: Can you point out anything in the bill under which the bed of the river could be interfered with?

Round: Not in terms; but this may be implied. [A correspondence was read between the petitioner and the town clerk of Birmingham, in the course of which the promoters, on being asked whether they intended to lower the bed of the river, replied that, as the petitioner's *locus standi* was objected to, they declined to answer the question.]

Michael: Objection 5 expressly states that there is no provision in the bill for lowering the

bed of the river. Let the promoters point to any such power.

Round: I admit that the bill does not show it; but if the Court, from other circumstances, believe that the promoters will have power to do something not expressly included in the bill, they will not shut us out from going before the Committee.

Mr. RICKARDS: Can it be done without express powers in the bill?

Michael: It has been decided that, although we have the absolute ownership of one side of the river, we cannot touch the river without the consent of the riparian owners on the other side. (*Attorney-General v. Lordisle*. 7. Law Rep. Equity, 377.)

Mr. RICKARDS: If a bill were passed for constructing works, according to certain plans, which would have the effect of lowering the bed of a river, that would be a legislative power over-riding the doctrine to which you refer?

Michael: No doubt; but let any such power, direct or indirect, be pointed out.

Round: In the hands of the millowners, I have a right to assume that the water-power will continue to be used for the purposes of their trade, and as a riparian owner, I have no fear of being interfered with in my enjoyment of the stream. But when it is proposed to acquire, compulsorily, the water-rights of the millowners, for persons who may turn them to entirely different purposes, and may choose to lower the level of the stream, am I to be prevented from showing, if I can, reasons against such compulsory transfer?

The CHAIRMAN: Do you contend that the millowners are bound, by usage or law, to keep up their millheads, so as to preserve to you your enjoyment of the water below?

Round: Unquestionably. They can only use the water, and having done so, pass it on to me.

The CHAIRMAN: A millowner has the right, acquired by grant or otherwise, to use the water in a certain way. Suppose the mill is burnt down, and there is nobody to re-erect it, can you force the owner of the soil of the mill to keep up the water-head, if he, no longer wanting the water, lets it return to its original flow?

Round: We do not know how far prescription might affect the matter. But the question raised would be a very nice one, and furnishes an additional reason for our being heard in Committee.

Mr. RICKARDS: You are bound to show that you have some right which will be interfered with by the bill?

Round: Apart from the question of level of the stream, a certain amount of sewage will be poured into the river, which must affect the right of fishing for which the petitioner paid when he took his lease.

Michael: The sewage now goes into the river unpurified; it will hereafter flow in in a purified state.

Round: It is by no means certain that the fishing will be improved. As to any legal remedies we may possess, they are of doubtful value. Where the right of shooting over land, taken by a railway company, was diminished in value, it was held that the owner of that right had no sufficient title to compensa-

tion. *Reilly v. The Eastern Counties Ry. Co.* (1882) 11 Q.B. 341; 53 L.T.R. 211; 53 L.T.R. 211. In the *Prutton and Colton v. The London and North Western Ry. Co.* (1882) 11 Q.B. 341; 53 L.T.R. 211, the promoters had two interests in the river. In the *St. Mary's Church v. The Ry. Co.* (1882) 11 Q.B. 341; 53 L.T.R. 211, it was observed that Sir L. Park's property was not within 200 yards of the gas-works. Here the property comes down to the edge of the river, and the petitioner's house is only 20 yards off. In the *Liverpool v. The Ry. Co.* (1882) 11 Q.B. 341; 53 L.T.R. 211, the property of the petitioners was shown not to abut on the site of the slaughter houses. This is a case where the Court, I submit, will feel inclined rather to stretch a point than otherwise.

Pendlebury Stephens (for Mr. Noel): The sewage works, as hitherto carried on, have caused a nuisance so great that the corporation have been compelled by injunction to remove them. And they now propose to bring the sewage of a town, having 200,000 inhabitants, to lands adjoining the estate of my client. It is true that none of his fields are actually touched; but the injury done to his property is serious. Cases can, no doubt, be cited, in which persons, none of whose lands were taken, have failed to establish a *locus standi*, though the works complained of came nearly to their doors. But is the Court prepared to hold that country gentlemen must live within a ring-fence of sewage-tanks, if corporations take care to keep just the other side of the boundary? In this case, the sewage-tanks will be on three sides of my client's property.

Michael (for promoters) dissented.

Stephens: According to the plans, two of the three tanks, certainly, will be covered. But there they are, nevertheless. To a case of this kind, though Mr. Noel may be only "injuriously affected," I do not think the harsh rule of exclusion has yet been applied. In one respect, he occupies a position closely resembling that of Mr. Chesshire; for the promoters take powers over a road bordering the estate of Mr. Noel, who still retains his property in the soil underlying the road. As to half this road, accordingly, he stands on a similar footing with Mr. Chesshire in respect of the river.

Michael: Our underground tunnel crosses the road, which, some distance further on, abuts on Mr. Noel's property.

Stephens: I speak of the limits of deviation, running along the centre of the road.

Mr. RICKARDS: There is nothing about the road in the petition.

Stephens: Mr. Noel also claims to be lord of the manor of Curdworth; and I am prepared, if necessary, to give evidence as to his manorial rights. Originally, Curdworth formed portion of another manor; and hence arises the necessity for saying that he is "joint owner, with others" of that manor. But the promoters have recognised his individual ownership by the terms of their notice.

Michael: He was served in conjunction with other gentlemen as lords of the manor.

Mr. RICKARDS: The notice purports to be upon him individually?

Michael : The notices were served on each of those gentlemen, not knowing what their rights might be, for caution's sake.

Stephens : The interest of a lord of the manor, of a joint tenant, or even of a tenant at will, if invaded, supports a *locus standi*. *Bradford Water Bill*, 1869, *Petition of W. Ferrand* (Cliff. & Steph. 41) ; *Maryport District and Harbour Bill*, 1868 (Cliff. & Steph. 5) ; *Caledonian (Tay Ferries), &c., Bill*, 1870 (2 Cliff. & Steph. 37) ; *Bute Docks, &c., Bill*, 1866, *Petition of W. S. Cartwright* (Smeth. 95). On the circumstance that Mr. Noel is also trustee of the school which is to be taken, I do not lay any great stress ; but it should be borne in mind.

Michael : The other trustees have not petitioned.

Stephens : It is said that Mr. Noel assented, in writing, to the bill. In answer to the notice which was dated 11th December, and required an answer before the 20th, he did send off a hasty assent. But the moment he saw the bill (which had not then been deposited in the House of Commons) and discovered that the promoters meant to construct tanks on three sides of his property, he recalled his assent by petitioning against the bill. Persons within 300 yards of a new gas work are entitled to a hearing. Why not hear us, whose lands adjoin these sewage tanks ?

Michael (in reply) : The provisions of this bill are not exceptional. At Merthyr Tydfil, Blackburn, Northampton and Reading, compulsory powers, to a greater extent, have been granted over lands for the purpose of establishing sewage works. At present, the whole of the sewage of Birmingham flows into the river Tame in an unpurified and undefecated state. Under the bill, a sewer is to be constructed for removing the sewage to land, where it will be subjected to intermittent filtration and applied to agricultural purposes.

Mr. RICKARDS : Under what power do the corporation now conduct the sewage into the river Tame ?

Michael : They have no power either as a corporation, or as a local board, to do any act which will create a nuisance. But under one of the general Acts (Towns Improvement Clauses Act, 1847, sec. 24) they are authorised to pour the effluent water of their sewage into any natural stream. Wherever the Legislature has imposed upon a corporation the responsibility of disposing of the sewage of their town it has given them all the power incidental to a local board, *quid* outfall and distribution.

Mr. RICKARDS : There has been no injunction to stop the promoters from sending sewage down the Tame ?

Michael : No ; the injunction is to restrain us from sending it down in such a condition as to create a nuisance, not to prevent us from sending sewage water into the Tame, for that is the natural outfall. This bill is for the express purpose of preventing any nuisance from being created. By the scheme now proposed, not a drop of the sewage is to go into the river till it *has been previously filtered through the land ; so that it will, in fact, be subterraneous water run-*

ning through a dozen channels into one or two, in order to be conveyed into the river Tame.

Round : This is a question of merits. In spite of all their efforts, they may not succeed in what they propose ; and we may be able to show this.

Mr. RICKARDS : It is important for us to know whether the river is now used for carrying the sewage-water ?

Round : It is, subject to an injunction which forbids the continuance of a nuisance.

Michael : According to the contention of the petitioner, we are, for the first time, about to undertake operations on the bank of the river, which may result in some of the sewage getting in ; whereas, in fact, the sewage will be poured into the river in a purified state. Mr. Noel must have known what was in contemplation when he assented, for the notice gave him the heads of the bill, and he could have seen the plans at the office of the clerk of the peace. He does not represent the body of trustees of the school ; and as to his lordship of the manor, the cases cited show that, beyond the mere title, some evidence must be given of how he will be affected, *quid* lord of the manor, by the bill. It is not enough to say that he is lord of the manor, and that, contingently, some damage may accrue to him from the works. There is no express S. O. applicable to sewage operations, as in the case of gasworks. It is true that at points adjacent to his property, we propose to construct underground receptacles for the sewage water, which will afterwards be distributed over the sewage lands ; but Mr. Noel's residence is a mile off. We do not interfere with that gentleman's *prima facie* right to half the road ; the other half, which we do take, lies in a different parish.

Mr. RICKARDS : According to the plan, the open sewage-tank appears to come up to the boundary of Mr. Noel's land ?

Michael : The distance from his land to the tank would be about 8 chains. It is no valid ground of objection to works in themselves meritorious, that, by some bad or defective arrangement, injury may be caused by them. If the petitioner be injured in this manner he will have his remedy at law. The objections of Mr. Chesshire are equally unsubstantial. His right of fishing is a mere easement, and will not be affected, whilst there are no special powers taken by the bill over the bed or waters of the river.

The CHAIRMAN (after deliberation) : The *locus standi* of both the petitioners is *Disallowed*.

Agents for Bill, *Sharpe, Parkers & Co.*

Agents for Mr. Chesshire, *Paine & Layton.*

Agents for Mr. Noel, *Dorington & Co.*

METROPOLITAN RAILWAY BILL.

March 22nd, 1872.—(Before Mr. WYNN, M.P.,
Chairman; Sir JOHN DUCKWORTH; and Mr.
RICKARDS.)

Petition of (1) the LONDON AND NORTH WESTERN
RAILWAY COMPANY.

*Railway—Traffic arrangements—Joint working—
Joint committees—Agreement scheduled to Bill—
Conflicting Agreement in another pending Bill—
Trains, fixing times of—Petitioners and Pro-
motors—Privity Between—Practice—Petition—
Locus standi limited by terms of—Not limited
by Court—General locus granted.*

A bill was promoted by the Metropolitan railway company confirming an agreement with the Metropolitan district company for a joint working of a portion of the Metropolitan district line and fixing the times of trains over it. The North Western company, who were also promoting a bill to confirm a similar agreement with the Metropolitan district company, though of later date, opposed the bill of the Metropolitan railway company, alleging that the two agreements were conflicting, and asked for a clause reserving their rights under their own agreement. It was objected that no privity existed between the petitioners and the promoters of the bill, the Metropolitan railway company, and that the remedy of the petitioners, if any, was against the Metropolitan district company, with whom they had contracted:

Held, that, as the bill against which the petitioners claimed a hearing, was a bill to confirm the alleged conflicting agreement, their *locus standi* must be allowed.

Where petitioners are clearly limited in their opposition to a bill by the terms of their petition, the Court will not think it necessary to direct an express limitation of their *locus standi*.

The bill was one to confirm an agreement between the Metropolitan and the Metropolitan district railway companies.

The *locus standi* of the London and North Western was objected to, because (1) they claim a right to be heard solely upon the ground that the agreement, dated June 29th, 1871, proposed to be confirmed by the bill conflicts, in certain particulars, with an agreement made between the petitioners and the Metropolitan district

company, dated August 1st, 1871; (2) the statement in the petition as to the conflict between the two agreements is erroneous in fact, and a right to be heard ought not to be conceded upon a misstatement, however inadvertently made; (3) if there be any conflict between the agreements, it is not by means of this bill or against the promoters that the petitioners must seek relief; they must modify their agreement with the Metropolitan district company to suit the antecedent agreement between that company and the promoters.

Littler (for North Western railway): The bill seeks to confirm a scheduled agreement between the Metropolitan and Metropolitan district companies, under which the lines of railway between the South Kensington and Kensington High Street stations, are for the purposes of certain traffic, to be considered the joint property of the two companies and to be worked by a joint staff under the control of a joint committee, the interchange service of trains being performed at times to be agreed on. Our trains run over lines from Willesden to Broad Street, and under agreement with the Metropolitan district company, we have power to run from Addison Road to the Mansion House. That agreement is scheduled to a bill now pending, and under it, in consideration of a sum of £100,000, we acquire the right to run not exceeding six trains an hour, in one direction, between Addison Road and Cannon Street, fixing the times of their arrival and departure so as to fit in with our trains at Willesden. Under the agreement in this bill, however, the joint committee would acquire the right of fixing the times of arrival and departure. We do not object to the proposed partnership between the two companies. All we desire is the reservation of our right to fix the times of our own trains.

Mr. RICKARDS: You wish that the addition of a new partner should not prejudice the agreement you have made?

Littler: Yes; and we ask for a clause saving our existing rights under our agreement with the District company, so that we may not be prejudiced by their agreement with the promoters.

Hollway (for promoters): If there be any inconsistency between the two agreements, it arises out of an agreement made by the petitioners, not with us, but, with the Metropolitan district company.

Mr. RICKARDS: But your agreement is confirmed by this bill?

Hollway: Our agreement is prior in point of date, and had been acted on for some time before the date of the agreement with the North Western company.

Mr. RICKARDS: Suppose the bill confirming the agreement between the North Western company and the Metropolitan district company, should receive the Royal Assent before the bill which confirms your agreement?

Hollway: Even then the two agreements are not inconsistent. Where running powers have been given by A to B, and C also asks for running powers, company B will not be heard against the grant of these powers. This is a somewhat analogous case. If the petitioners desire to enforce their agreement with the

Metropolitan district company, their remedy is at law; they can have no right to oppose our bill on such a ground.

The CHAIRMAN (after deliberation): The *locus standi* of the London and North Western railway company is *Allowed*.

Hollway: Will you not say that it is allowed so far as relates to the agreement?

Mr. RICKARDS: As the petition will not allow counsel to enter upon any other matter, it is hardly worth while to limit the *locus standi*.

Hollway: We would rather you would limit it, so as to avoid any discussion before the Committee.

Littler: Our petition simply sets out the two heads of agreement, so that we are expressly limited by the agreement, and indeed have no interest in anything else.

The CHAIRMAN: That being so, it does not seem necessary to limit the *locus standi*.

Locus standi Allowed.

Agent for Petitioners, Blenkinsop.

Petition of (2) the WHITECHAPEL DISTRICT BOARD OF WORKS.

Railway—Partial Abandonment—and Extension of Time—Effect upon Thoroughfares—and Inhabitants—Local Board of Works—Right of, to Oppose Abandonment of Railway—Breach of Faith by Promoters; Allegation of—Metropolitan Board—Travelling Public—Representation—S. O. 134.

A bill which proposed (*inter alia*) the abandonment of part of an authorised line, and an extension of time for the construction of the remaining portion, was opposed by a local board of works in the metropolis on the ground (1) that as the local authority exercising a control over streets which would have been crossed by the proposed railway, they had received the usual notice of abandonment, and were entitled to oppose it; and (2) that they represented inhabitants of the district traversed by the intended line who would be prejudicially affected if the line were not constructed, and constructed without delay. The Metropolitan board of works had petitioned against the bill, and their *locus standi* was admitted:

Held, that the local board were not entitled to a *locus standi*.

The bill was one for the abandonment of a portion of the Tower Hill extension railway to the east of Aldgate; and as to the remainder of this line the company sought an extension of time, both as to purchase of lands and construction of works. The line to be abandoned was *situate within* the district of the petitioners,

who objected to such abandonment, and to the proposed extension of time, alleging that application to abandon the line had already been made to Parliament (in 1870) and refused; that the line would relieve over-crowded streets within the jurisdiction of the petitioners, and so be advantageous to the inhabitants; that the abandonment would be a breach of faith on the part of the company, contravening the conditions on which they obtained their Act in 1864; and that, as to the extension of time for constructing the rest of the line, the petitioners and the inhabitants were interested in its speedy completion, and the delay asked for (to 1875) was unreasonable.

The *locus standi* of the petitioners was objected to, because (1) no property vested in or under the jurisdiction of the board will be taken or interfered with; (2) the board were not constituted to represent the interests of the inhabitants with respect to the proposed abandonment, and S. O. 134 gives them no right to be heard as such, but, on the contrary, excludes the board from being heard as representing the inhabitants; (3) the petitioners allege some breach of faith on the part of the promoters, but do not allege that it was faith pledged to them; (4) the petitioners do not allege that the extension of time for the purchase of land, affects any land vested in or under their jurisdiction; (5) petitioners lay no ground for a hearing.

Shrubsole, Parliamentary Agent (for petitioners): In respect of streets under our jurisdiction, we stand in the same position as a private landowner, who is entitled to notice as to taking the land and also to notice of abandonment. We have received such notice, and as the local authority controlling streets which this line would have crossed, we are entitled to go before a Committee and urge reasons why it should not be abandoned. (*South London Gas Bill; Petition of South Eastern Railway Company, Ante, 219.*)

Mr. RICKARDS: Can you cite any case in which the local authority has been allowed a *locus standi* against the abandonment of a line that was to cross the streets?

Shrubsole: I do not remember any such case.

Mr. RICKARDS: You certainly would have the right to appear against a bill proposing to interfere with the streets; but where the bill proposes to give up that interference, the question is rather a different one.

Shrubsole: Technically, we have a right to be heard on a question of abandonment, when that abandonment affects property in which we are interested.

Mr. RICKARDS: You must show *prima facie* that you can be prejudiced?

Shrubsole: The other ground on which we petition is that the district we represent is interested in the completion of the line proposed to be abandoned. We are the local authority of the district, and we say the inhabitants will be injuriously affected by the abandonment. The promoters reply, in effect, that we are not the local authority of the metropolis. But though the Metropolitan board may have petitioned against the bill, the admission of their *locus standi* does not exclude the particular

parish directly affected by this abandonment. In opposition to the *South London Gas Bill* (*Ante*, 220), the Court admitted the parishes as well as the metropolitan board; and in other cases parishes have been admitted along with the metropolitan board.

Holliday (in reply): The petitioners are neither owners nor lessees; they are a representative board, having to deal with specific interests which are not at all affected by the bill. In the *South London Gas* case the parishes were admitted, as well as the metropolitan board, because their interests were distinct. In 1870 the Referees decided that the metropolitan board represented the travelling public in the metropolis as to the abandonment of an authorized line. (*Metropolitan Railway Bill*; 2 *Cliff. & Steph.* 22.) Here we have not objected to the *locus standi* of the metropolitan board.

The CHAIRMAN (after deliberation): The *locus standi* of the Whitechapel Board of Works is *Disallowed*.

Agent for Petitioners, *Shrubsole*.

Agents for Bill, *Dyson & Co.*

WEAVER RIVER NAVIGATION BILL.

22nd March, 1872.—(*Before Mr. WYNN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Petition of the SHROPSHIRE UNION RAILWAYS AND CANAL COMPANY.

Canal—New Cut—Continuous Water System—Canal Traffic: Interchange of by Steam Hoists—Competition—with Railway—by Public Body—Tolls on Canal—Application of Surplus Revenue—in aid of County Rates—Single Ratepayer—Improvement of Navigation.

The trustees of the Weaver Navigation promoted a bill authorizing them to connect their navigation at Anderton with the Trent and Mersey canal, which would give them a continuous water route to Liverpool. The bill was opposed by the Shropshire canal company, whose system was connected with the Trent and Mersey canal, and who also conveyed goods to Liverpool. There being already an interchange of goods at Anderton, between the Weaver and the Trent and Mersey systems, by means of steam hoists, the promoters urged that they were merely seeking to make existing competition more effectual. The Weaver navigation trustees were a public body, bound to pay over their surplus revenue to the county justices, who

applied it in aid of the county rate. The petitioners, as contributors to the county rate, objected to any application of public capital by the trustees for the purpose of competition with ratepayers; and further complained that higher rates were levied upon them, at their point of junction with the Trent and Mersey canal, than were to be paid by the promoters at Anderton:

Held, that the petitioners were not entitled to a *locus standi* on the ground of competition; that as single ratepayers they could not be heard against the proposed application of capital by the navigation trustees; and that the difference made by the Trent and Mersey company in their scale of charges, as between the promoters and petitioners, did not give the latter a right to oppose the bill.

This was a bill promoted by the trustees of the Weaver navigation, to make a cut, or short communication, at Anderton, 50 yards long, between their navigation and the Trent and Mersey canal (now merged in the North Staffordshire railway), which runs through the Staffordshire Potteries, past Wardle lock, near Middlewich, and on to Preston brook, where it joins the Bridgewater canal.

The petitioners' canal, the Shropshire union, runs from Wardle lock, near Middlewich (where it locks into the Trent and Mersey canal), to Ellesmere port, on the Mersey, *via* Chester; and they opposed the bill chiefly on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) a difference of toll for different services at different places; and (2) the fact that petitioners are subject to county rates, give no right to be heard; (3) assuming the ratepayers of the county of Chester to be injured under the bill, the county justices, to whom the surplus revenue is payable by the Weaver trustees, are the proper persons to petition; (4) no competitive route will be established under the bill; (5) the main object of the petitioners is to procure the increase of certain charges, but this object gives no right to be heard.

Little (for petitioners): The trustees of the Weaver navigation are a public body not trading for profit, but constituted simply for the improvement of the navigation. By means of our canal a large traffic is carried on between the Staffordshire Potteries and Liverpool. There exist at present at Anderton the means of transferring goods from the Trent and Mersey canal to the Weaver and *vice versa*, by means of steam hoists and other machinery, the river Weaver and the canal being at different levels; in this way goods from the Staffordshire Potteries can be transferred to the Weaver navigation, and so conveyed to Liverpool, but that means of competition with us is at present very

inefficient, and practically it may be said that there is no competition at all. The proposed cut, however, will enable boats to pass between the Weaver navigation and the Trent and Mersey canal, and thus a thoroughly effective competitive route will be established. Moreover, we should be handicapped in the race, because at Wardle lock we have to pay to the Trent and Mersey company statutory charges, much higher than those which the Weaver trustees will pay to the same company at Anderton. The surplus revenue of the Weaver trustees goes in aid of the county rate in Cheshire. We are large rate-payers there, and the Weaver trustees ought not to be allowed to embark capital properly applicable for county purposes in establishing a competition with us who are county rate-payers. No doubt a single ratepayer cannot be heard under ordinary circumstances; but here the rates, which we pay, may be increased by a scheme tending to our direct injury. We say also that if this continuous water communication be established, it should be on terms affording an equitable consideration to existing interests, and that the same rates of tolls should be imposed in the bill as those we are required to pay for access to the Trent and Mersey. The competition will then take place upon an equal footing; and we ask to be allowed to contend in Committee that the promoters shall not be allowed to make their cut into the canal, unless they make some arrangement with the Trent and Mersey company for the reduction of our tolls at Wardle lock. (Counsel referred to *Birmingham and Lichfield Bill*; *Petition of Midland Company*; 2 Cliff. & Steph., *Ante*, 223; *Cleveland Extension Mineral Railway Bill*; *Petition of Whitby, Middlesbrough and Redcar Company*; 2 Cliff. & Steph., *Ante*, 228; and *London and North Western Railway Bill*; Cliff. & Steph. 109.)

Denison, Q.C. (for promoters): The North Staffordshire railway company, who own the Trent and Mersey canal, are our competitors, and are not, therefore, very likely at our request to reduce any tolls they have a right to charge at Wardle lock; and Parliament would not be likely to put on a higher charge than we propose to make for the use of the new cut at Anderton, in order to prevent us from competing with the petitioners. If the petitioners are handicapped, it is not by us but by the Trent and Mersey company, to whom they must appeal. The petitioners admit that competition already exists at Anderton, by means of steam hoists and other engineering appliances. We only seek to make the existing competition more effectual by connecting the two navigations; and the petitioners are no more entitled to be heard against that proposal, than companies interested in the west coast route to Scotland would be against a plan to improve the eastern route by making a through run at the York station. In the cases cited, new lines were proposed which would shorten the distances considerably. Here it is clear that no Committee would listen to an opposition to this small improvement in the existing communication on the ground of competition. As to the rating question, the petitioners are a single interest, and the proper persons to raise this question are the representatives

of the ratepayers, the justices of Chester. Their argument really amounts to this, that inasmuch as the county has a residuary interest in the profits of the Weaver navigation, and petitioners pay rates in the county, the Weaver navigation must never be improved, because it must always compete with the petitioners.

Locus standi (after consideration) *Disallowed*.

Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Martin & Leslie*.

LONDON AND NORTH WESTERN RAILWAY BILL.

8th April, 1872.—(Before Mr. WYNN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of the CAMBRIAN RAILWAYS COMPANY.

Railways—Competition—Narrow Gauge—Mineral Traffic—Agreement—Rebate—Diversion of Traffic.

The bill proposed, amongst other things, to authorise the London and North Western railway company to make a railway of any gauge, and about eight miles long, commencing at their Bettws-y-Coed station, and terminating in the parish of Festiniog, by a junction with the Festiniog railway, which crossed the petitioners' line near Penrhyn-dendraeth, and terminated at Portmadoc. The Festiniog railway was constructed upon a gauge of two feet, principally for the accommodation of the slate quarries. The petitioners alleged that their own system was the "regular outlet" for all slates and other minerals brought by the Festiniog line, and intended to be conveyed to England, or to places south or west of Portmadoc, excepting only such as were shipped at Portmadoc for transit by sea; and that the proposed railway would abstract a large proportion of this traffic, and carry it by way of Bettws-y-Coed and the North Western system to places to which the petitioners' line formed the present route.

The *locus standi* of the petitioners was objected to, because the competition alleged was not of a character entitling them to be heard.

Salisbury; (for petitioners): At present the whole of the inland traffic of the Festiniog Railway passes over our line; but by means of the proposed junction, the North Western company will be able to take to Welshpool or Whitchurch by their own line, *via* Bettws-y-Coed, traffic which now must pass over the Cambrian.

The CHAIRMAN: That would be a very long way round?

Salisbury: Yes; but we know that a long extra distance is no bar to competition. We have a Parliamentary agreement with the North Western company, under which we receive a rebate of 50 per cent. upon goods and passengers, handed over to them by us. If the bill passes,

it will manifestly be the interest of the London and North Western company to gather all the merchandize and passengers they can upon this Festiniog railway, and take that traffic upon their own line, thereby getting rid of the agreement with us.

Rodwell, Q.C. (for promoters): The Festiniog is an independent railway, fifteen miles long, interposed between the Cambrian line and the proposed line; and the Festiniog company does not petition. The traffic which the proposed line will accommodate is new, and does not at present go on the Festiniog railway. We want to take traffic destined for the north, or for the direction of Chester, *via* Bettws, as this cannot at present go except by the roundabout route of the Cambrian. The competition alleged is too remote to be worth talking about. (*London and North Western Railway Bill; 2 Cliff. & Steph. 64.*)

The CHAIRMAN: The *locus standi* of the Cambrian railways company is *Allowed*.

Agent for Petitioners, *Corfield*.

Agents for Bill, *Sherwood & Co.*

MID LONDON RAILWAY BILL.

8th April, 1872. — (*Before Mr. WYNN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Petition of (1) the METROPOLITAN RAILWAY COMPANY.

Railway—Lands, &c., of another Line—Purchased, or Authorised to be Purchased—Interference with—Locus Limited or Unlimited—Including Competition—Origin of S. O. 130—Landowner's Locus Defined.

Where the lands of a railway company, purchased or authorised to be purchased, were taken or interfered with by a bill sanctioning a rival undertaking, and it was contended that the S. O. gave the Court a discretion, and that ownership for statutory purposes differed from private ownership of land:

Held, that the S. O. was in addition to, and not in abrogation of, the ordinary landowner's right to be heard, which is a "general *locus standi*, against preamble and clauses, and on all grounds."

In the construction of the proposed railway, it would become necessary to interfere with lands, &c., of the petitioners in the city of London, to cross their line at the Smithfield curve, and to take or interfere with lands acquired, or authorised to be acquired by them, under the

Metropolitan Railway (Tower Hill Extension) Act, 1864.

The *locus standi* of the petitioners was objected to, because (1) they were not entitled to be heard on the ground of interference with lands they were authorised to acquire; or (2) of competition, inasmuch as the railways would accommodate a traffic which could not be served by the petitioners' railway; (3) they could only be heard against those provisions of the bill which authorised the taking, &c., of any of their railways, lands, or property; (4) they had no sufficient interest.

Denison, Q.C. (for petitioners): We are entitled, not to a restricted, but to an unlimited *locus standi*. This was conceded to the South Eastern railway company against the *South London Gas Bill* (*Ante*, 219), where the pipes of the company might interfere with the railway.

Sargood, Serjt. (for promoters): The S. O. is not absolute, for the petitioners may be heard "against such provisions, or against the preamble and clauses."

Mr. RICKARDS: The Referees have never considered that the S. O. abrogates the general rule under which a railway or other company is entitled to an unlimited *locus standi*, if its land is taken or interfered with.

Sargood: A railway company stand in a different position from private owners of land, being owners only for a statutory purpose. Petitioners accordingly, should only be heard so far as the proposed taking of their lands would affect the undertaking for which those lands were required, and not on the question of competition.

The CHAIRMAN: The Referees are of opinion that the *locus standi* must be general.

Denison: The S. O. itself has a wider significance than is now attempted to be put upon it: I remember the circumstances under which it was introduced. A railway company, for whom I was counsel, wanted to raise a question of competition, and Lord Palmerston, who was chairman of the Committee, decided that they should not. That was felt to be so unjust, that this Order was introduced shortly after, and since then there has been no instance in which a railway company, having even a post taken, has been precluded from a general *locus standi*.

Mr. RICKARDS: It has always been held that a landowner's *locus* is a general *locus* against preamble and clauses, and on all grounds.

Locus standi Allowed.

Agents for petitioners, *Burchells*.

Petition of (2) the SOUTH EASTERN RAILWAY COMPANY.

Railway—Authorised—not Constructed—Powers of agreement—Previous powers of working over—Competition—Compulsory Powers—Equivalent to actual purchase.

A bill for sanctioning (*inter alia*) a branch railway, to join a line authorised but not constructed, and the making of agreements with that line, was opposed by another company, which had obtained, under agreement, powers of working over the authorised line and of appointing members of a joint committee. The company whose line was in dispute did not itself join in the objection:

Held, that the petitioners had no *locus standi*.

(*Per Cur.*) A company having compulsory power to take land, has always been regarded as in the same position as if it had actually purchased the land.

Among the railways authorised by the bill, was a short branch, joining the London Central railway authorised in 1871; and powers of agreement with that company and others, were proposed to be sanctioned. Under existing legislation, the petitioners had power to work the London Central railway, when constructed, and they objected to the proposals of the bill.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs were taken; (2) they were not entitled to be heard against provisions enabling promoters and others to enter into working and traffic arrangements; (3) they had no interest in the London Central railway entitling them to resist the making of a junction with the railway, the works of which had not been commenced, or any land acquired; (4) no grounds of opposition, according to practice, were disclosed.

Shrubsole, Parliamentary Agent (for petitioners): We are practically joint owners of the London Central line, and as to any provision affecting it, physically or otherwise, it is necessary for our protection that we should be heard.

Mr. RICKARDS: Does the London Central company petition?

Shrubsole: No. It is an independent company; but not interested as we are. Our power of working it extends only to South Eastern traffic, but the management of the line will be by a joint committee of which we name a proportion. By our agreement with the London Central no clause prejudicial to the interests of the South Eastern was to be inserted in the bill then pending, or in any Act thereafter applied for by, or on behalf of, the Central company, or in any agreement made by them with any other company. Yet this bill would sanction the making of such an agreement as was thereby prohibited.

Sargood, Serjt. (for promoters): The company affected by this bill is not the South Eastern, but the London Central company. They however, have only powers to take land and have not purchased any. Hence, they are not land-owners in the ordinary sense.

Mr. RICKARDS: A company having compulsory power to take land has been always regarded as

in the same position as if it had actually purchased the land.

Sargood: At any rate the South Eastern are in a different position. Persons having agreements with a railway company do not thereby acquire a *locus standi*, if the company itself does not interfere. Besides, were the Central railway to make an agreement prejudicial to the interests of the South Eastern, they might be restrained, under the existing Act and agreement between those companies.

The CHAIRMAN: The *locus standi* of the petitioners is *Disallowed*.

Agents for Petitioners, *Dyson & Co.*

Agent for Bill, *H. Toogood*.

NORTH WALES NARROW GAUGE RAILWAY BILL.

8th April, 1872.—(*Before Mr. WYNN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Petition of the LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Railways—Competition—Rival Bills—Same land scheduled—S.O. 133—Limitation of locus standi—Practice—Rival Bills—Reference to Promoters' Petition—Argument must be founded on Record before Court—Bill, Petition, Notices of Objection—Sufficiency of Petition—Absence of General Allegations.

Company A promoted a bill for the construction of eight short lines of railway, and for the purposes of three of these lines scheduled lands which were also scheduled by a competing company, B, for the purposes of its bill. Each company petitioned against the other. B did not object to the *locus standi* of A; but against the petition of B it was urged that, having relied entirely upon their claim to the lands scheduled by both companies, the petitioners could only be heard upon clauses, and not against the whole bill:

Held, that the *locus standi* of the petitioners must be limited to so much of the preamble and clauses as related to the three proposed railways.

The fact that the same land is scheduled by two railway companies does not necessarily presume a competition for traffic between the two schemes; and where a petition did not allege competition, counsel was required to confine himself to the record—the bill, petition, and notices of objection before the Court—and was not allowed to refer to the

map, or the petition of the promoters against the petitioners' bill, in order to show that, in the opinion of the promoters themselves, the two schemes were competing schemes.

The bill proposed the incorporation of a company for making eight railways.

The petitioners alleged that the construction of several of the intended railways would be injurious to them and prejudicial to their interests; and that for Nos. 1, 2, and 4, the promoters intended to take lands and property required for a line or for works which the petitioners were proposing to construct in a bill also pending.

The *locus standi* of the petitioners was objected to, because (1) no competition is alleged; (2) no lands, &c., are taken; (3) the petitioners are not entitled to appear, either from the fact that they seek powers in the present session to take some of the lands which might be taken under the bill for the proposed railways No. 1 and 2, or from their allegation that they may require lands and property which might be taken under the bill for the proposed railway No. 4; (4 and 5) they set forth no such interest as entitles them to be heard; (6) the bill contains no provisions affecting them.

Rodwell, Q.C. (for petitioners): The promoters ask for powers over certain lands which are required for our undertaking. For a distance of two and a half miles they take portions of the same land, and the question will be, which of us is to exercise these powers. In that case, the one company has a *locus standi* against the other company, and such a *locus standi* must apply to the whole scheme, so that the merits of both projects may be discussed in their integrity. We are also entitled to be heard on the ground of competition, which exists on the showing of the promoters themselves.

Rees, Parliamentary Agent (for promoters): As a matter of practice, counsel cannot refer to the petition we have presented against his bill; he must keep to the record, and therefore can only refer to the bill, petition, and notices of objection now before the Court.

Rodwell: It is a petition to the House, forming part and parcel of the enquiry, and it throws light upon the respective positions of the two companies. We do not object to their *locus standi* against our bill; and I propose to show by their own allegations that there would be competition.

The **CHAIRMAN**: The Referees are of opinion that you cannot go beyond the four corners of the bill, the petition, and the grounds of objection, by referring to another petition not before them.

Rodwell: Then I will show from the map that these are two competing schemes.

Rees: The petition does not allege competition.

Rodwell: It alleges competition for the land we require, and the use of the same land assumes a competition for traffic.

Mr. RICKARDS: Two companies might propose to use the same land, and yet the ultimate

termini might be so remote that there could be no possible competition for traffic.

Rodwell: That may be so, but here, on the face of the map and the preambles of the two bills, there is clearly competition for traffic.

Mr. RICKARDS: We do not know from this petition that you object to that competition?

Rodwell: Am I to be excluded from being heard against a rival scheme because I have not used the word "competition"?

Mr. RICKARDS: It is the absence, not of the word, but of anything equivalent to the word.

Rodwell: Then I take my stand on another point. We are quasi landowners. We have scheduled this land, and having as much claim to it as our opponents, we are entitled to go before the Committee and urge the reasons why we should be allowed to take it.

Mr. RICKARDS: The allegation as to the land is limited to certain of the proposed lines, namely, Nos. 1, 2, and 4.

Rodwell: Yes; lines 1 and 2; line 4, which interferes with our station; and Clauses 61 and 62 in the bill.

Rees (in reply): The mere fact that two sets of promoters are competing for the same land, does not necessarily entitle the one to be heard against the other, except for the purpose of seeing that there are inserted in both bills the usual and proper clauses for determining their relative rights. There are innumerable cases in which, where the same lands had been scheduled by the promoters of two schemes, compulsory powers were granted to both, clauses being inserted regulating their respective rights. To that extent, and against Clauses 61 and 62, the petitioners here are entitled to be heard, but no farther. If their case was that the construction of one line would render physically impossible the construction of the other, the Committee would have to decide which of two inconsistent lines they should pass; but, for all that appears here, the plans and sections are such that each line may be efficiently made within the limits of deviation, and therefore no question necessarily arises as to the preamble of either bill. Both bills may be passed with perfect consistency. The petitioners do not allege that theirs is the better line. They simply say that they want to obtain compulsory powers over the same lands which we require. If they wanted to be heard against the merits of our bill, they ought to have shown that it was impossible these joint powers could be granted. But there is no reason why they should not co-exist. In practice, where such powers are granted, the rights of the two parties are regulated by agreement, or by reference to some engineer of eminence, who determines how the object each has in view can be best accomplished. To this extent the petitioners may be heard as to the land we both desire, but they have no right to be heard against the whole preamble of the bill. I suppose the petitioners do not seek to be heard except as against the three railways?

Rodwell: Yes; the Committee cannot consider which line they ought to sanction, unless they go into the whole scheme. The Referees have decided that we cannot be heard on the ground of competition; but the Committee cannot say

whether the balance of public convenience is in your favour or in mine, unless the whole question is discussed.

Rees: If, before the present session, the petitioners had been entitled to be heard as *quasi* landowners, they would have been heard against the whole bill; but S. O. 133 now gives the Court a discretionary power to limit the *locus standi* of railway companies in such cases, even where the companies possess the land. *A fortiori* this limitation will be imposed where a company merely seeks to take the land.

The CHAIRMAN: The *locus standi* of the London and North Western railway company is allowed against so much of the preamble and clauses of the bill as relates to the proposed railways, 1, 2 and 4, and also against sections 61 and 62 of the bill, and so much of the preamble as relates thereto.

Agent for Petitioners, *Blenkinsop*.

Agents for Bill, *Dorington & Co.*

SEVERN TUNNEL RAILWAY BILL.

8th April, 1872. — (*Before Mr. WYNN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Petition of (1) the MIDLAND RAILWAY COMPANY.

Railway—Tunnel—Ferry—River—Railways on Opposite Banks of—Connecting Line—Competition—Existing—and Improved.

A bill was promoted, nominally by an independent proprietary, but substantially by the Great Western company, for the construction of a railway under the Severn, to connect the system of that company, on the opposite banks, at present connected only by a ferry. The bill was opposed by a company in competition with the Great Western, on the ground that the construction of this connecting link would be the opening up of a new competition. The Great Western were already in exclusive possession of the ferry, which they had purchased under statutory powers:

Held, that the proposed line would merely improve an existing means of communication and competition, and that the petitioners, therefore, had no *locus standi*.

This was a bill for the construction of a line of railway nearly eight miles long, to connect the Great Western railway system, on the oppo-

site banks of the Severn, by means of a tunnel about two miles in length. The petitioners opposed on the ground of competition.

Their *locus standi* was objected to, because (1) no lands, &c., of theirs, are taken; (2) no such competition as is alleged will arise under the bill; (3) if any competition arises, it is too remote; (4) the petitioners allege that other schemes now before Parliament for crossing the Severn are preferable to the tunnel railway, and that the latter may seriously impede the navigation of the Severn, but the petitioners have no right to be heard against the bill for the purpose of advocating other schemes, and the protection of the navigation rests with the harbour department of the Board of Trade and the Severn commissioners; (5) the petitioners have no *locus standi* according to practice.

Venables, Q.C. (for petitioners): We ask to be heard on the ground of competition. This is a Great Western line, though nominally independent. The Great Western, by means of their tunnel, will connect their system at Bristol with their system at Newport; that is, they will convert two separate and isolated railways, ending in nothing, or in a ferry, into a through line of communication from Bristol, Shrewsbury, and the district beyond Shrewsbury to South Wales. We compete with the Great Western company at various places in South Wales and elsewhere. At present they only have a right to cross the ferry in common with all the rest of the public; therefore, to make a railway where there was no railway before is to create competition.

Rodwell, Q.C. (for promoters): The Union railway company, under their Act of Parliament, purchased the ferry for the purpose of communicating between the lines on the opposite banks of the river, and it has been disused for years as a public ferry.

Venables: Still, a new competition is originated by the bill, whereas the ferry created no competition at all. Not an ounce of the goods' traffic between Bristol and Manchester and Liverpool, which is extremely important, could be carried by the ferry; but this railway under the Severn will give the Great Western a shorter line to places beyond Shrewsbury, where we compete with them. Suppose, instead of a river, there had been six miles of road, and it had been proposed to construct a connecting line along that road, we should have been heard on the ground of competition.

Rodwell (in reply): We merely propose to connect our railways on opposite banks of the Severn, substituting for the existing and imperfect communication one of an improved kind. Though the means of communication are not so good now as they will be under the bill, competition exists at present by means of the ferry; and under such circumstances petitioners are not heard. (*Rhymney Railway Bill*; *Cliff. and Steph. Practice* 64, and App. 122. *Brecon and Merthyr Railway Bill*; *ib.* 105). Last year, 380,000 passengers crossed the ferry; and though it may be inconvenient to get coals across, that is a question with which the Midland company have nothing to do.

Mr. RICKARDS: The River Weaver Navigation

Bill (Ante, 239) somewhat resembles this. The case here seems to be that of a railway with a gap in it?

Rodwell : The gap to be filled up being at present under the control of the Great Western company, who start ferry boats to meet particular trains.

The CHAIRMAN : The *locus standi* of the Midland railway company is *Disallowed*.

Agents for Petitioners, *Sherwood & Co.*

Petition (2) of the GLOUCESTER AND BERKELEY CANAL COMPANY.

Railway—Tunnel Underneath River—Air Shafts in Tideway—Interference with Navigation—Beyond Commissioners' Jurisdiction—Board of Trade—Requirements of—Canal Company—Distant 16 miles—Traders on the River—Competition.

In constructing a railway tunnel under the Severn it was proposed to place in the tide-way pillars to serve as air-shafts ; and the Board of Trade assented to the proposal conditionally on the insertion of a clause providing for the lighting of these pillars between sunrise and sunset. The bill was opposed by a canal company whose canal entered the river at a point 16 miles higher up than the tunnel, and who alleged that the proposed air-shafts would render the navigation dangerous, and so injure the traffic on their canal :

Held, that the petitioners had a *locus standi* ; notwithstanding the report of the Board of Trade, and the distance of the canal from the projected works.

The canal company complained, not so much of the railway or tunnel itself, as of the means proposed for its ventilation. Their *locus standi* was objected to, because (1) no lands, &c., of theirs are taken ; (2) it does not rest with them to protect the river Severn and its navigation, but with the Board of Trade and the Severn commissioners, the petitioners having no control or jurisdiction over the river ; (3) they cannot be heard according to practice.

Granville Somerset, Q.C. (for petitioners) : We object to the bill on the ground that, if it were sanctioned, the navigation would be seriously interfered with, and our trade injured, if not destroyed. Our canal enters the Severn 16 miles above the proposed tunnel. We do not care what the promoters do underground, but they propose to make large air-shafts in the tideway, in such positions as will render the navigation of a narrow and difficult channel still

more dangerous. It is said that the Board of Trade and the Severn commissioners are both satisfied with what is proposed in the bill. What the board says, simply is that if these air-shafts are constructed, lights must be put on the top of them ; and as to the Severn commissioners, they have no control over this part of the river ; their jurisdiction ceases 30 miles above it. The Board of Trade do not appear before Committees, though the plans of such bills are laid before them ; so that, unless we appear, no one will represent the interests of the navigation. The proposed works will block up the entrance to our canal, and stop our traffic. The chief trade with Gloucester is in corn and timber, conveyed in large sea-going vessels which anchor below this tunnel and try to come up in one tide ; if they miss that tide, they may be there for a month, so that the slightest interference with the navigation, by sticking up pillars in the middle of the river, will greatly injure the port of Gloucester and the trade of our canal. The promoters of the bill are the Great Western railway company, whose object is to shut up river navigation, and thus prevent competition. The following cases are in point : *Bradford Canal Bill* (*ante*, 178) ; *Farsham and Netley Railway Bill*, 1865 (*Smeth*. 120) ; *Severn Junction Railway Bill* (*Ib.* 168) ; *Dee and Mersey Railway Bill* (*Ib.* 172) ; *Connah's Quay Railway and Docks Bill* (*Ib.* 173) ; *Great Eastern Railway Bill*, 1865—*Petition of Merchants, &c.* (*Cliff. & Steph.* 70) ; *South Eastern and Brighton, &c., Bill*, 1868 (*Ib.* 149) ; *Hereford and Gloucestershire Canal Navigation Bill*, 1870 (2 *Cliff. and Steph.* 29).

Rodwell, Q.C. (in reply) : The petitioners are not the only people who use the Severn, and we are not interfering with their canal, but with the waterway within the jurisdiction of the Admiralty. According to the doctrine now set up, anybody who has a vessel in the Severn would have a right to be heard against the bill, however great the distance from the proposed tunnel. No freighters, warehouse-owners, or dock-owners at Gloucester oppose the bill. The petitioners have not a barge or a dock belonging to them. They simply own the water-way used by certain vessels which pay them toll ; and if admitted at all, they should be restricted to the particular clause in which alone they can be interested—that relating to the air-shafts. We have arranged clauses with the Board of Trade, and if they are satisfied, you have a right to assume that a company, whose canal is sixteen miles off, ought to be satisfied also. The cases quoted may be distinguished from this.

The CHAIRMAN (after deliberation) : The Referees would like to see the clause proposed by the Board of Trade ?

Shrubsole (for promoters) : We have not the clause here ; but the Board of Trade suggest in their report, that a clause should be inserted providing for the exhibition of lights on the pillars from sunset to sunrise.

Locus standi Allowed.

Agents for Petitioners, *Hayes, Twissden, Parker & Co.*

Agents for Bill, *Dyson & Co.*

CHESHIRE LINES COMMITTEE BILL.

10th April, 1872. — (Before Mr. WYNN, M.P., Chairman; Sir T. E. COLEBROOKE, M.P.; and Mr. RICKARDS.)

Petition of (1) OWNERS, LESSEES, and OCCUPIERS in GREAT GEORGE STREET and BERRY STREET, LIVERPOOL; (2) LIVERPOOL UNITED GAS LIGHT COMPANY.

Railway—Tunnel—Use of Gunpowder in Construction, Repeal of Clause prohibiting—Apprehended Injury to Houses—Compensation—Owners, Lessees, &c.—Municipal Corporation Representation—Withdrawal of Protection—Gas Company—Streets—Easement—Injury to Mains and Pipes—Railways Clauses Act, 1845—S. O. 29 (Repeal of Statutory Provisions).

Practice—Objection withdrawn during Argument—Conditional Right of Reply—Prima facie Case made out by Petitioners—Promoters' Counsel called on.

A railway company who were prohibited from using gunpowder or other explosive materials in the construction of a tunnel under the town of Liverpool, promoted a bill repealing the prohibitive clause. This repeal was opposed by owners, &c., of property situated along the roadway above the course of the tunnel, but beyond the limits of deviation:

Held, that the owners, &c., at whose instance the prohibitive clause had been inserted in the Act were entitled to a *locus standi* against its repeal, notwithstanding the fact that a special clause, providing for compensation in case of injury to their property, was also contained in the Act.

The bill was likewise opposed by a gas company who apprehended injury to their mains and pipes:

Held, that they were not entitled to a *locus standi*.

Where a strong *prima facie* case is made out by petitioners, the Court will call on counsel for promoters to answer such a case, even though this may involve a right of reply, denied in ordinary practice.

Section 42 of the bill proposed (*inter alia*) to repeal section 11 of the "Manchester, Sheffield, and Lincolnshire Railway Company, and Cheshire Lines Committee Act, 1871," which was as follows:—"The committee shall not use gunpowder or any other explosive substance in the construction of the works between Seel Street and Parliament Street." The works in question

comprised a tunnel under a portion of the town of Liverpool.

The owners, lessees, and occupiers opposed the repeal of the clause on the ground that their property was situated in Great George Street and Berry Street, over the course of the tunnel, but outside the limits of deviation, and that not only would its safety and stability be endangered, but that life might be endangered were the use of gunpowder permitted. They also alleged that section 11 had been inserted in the Act of 1871 at their instance, after full enquiry by Parliament, and as the result of considerable cost incurred by them in appearing before the Committee.

The gas company petitioned against the repeal of the same clause on the ground of apprehended injury to their pipes and mains.

The *locus standi* of owners, &c., was objected to, because (1) section 11 of the Act of 1871 was not inserted at their instance, or for their protection or benefit; (2) should any damage arise by the use of explosive substances in the formation of any tunnel or railway, the general law afforded sufficient protection; (3) the Liverpool corporation had petitioned against the bill, and particularly against the repeal of section 11, and the petitioners as ratepayers and inhabitants of Liverpool, were represented, and had no right to be heard separately; (4) petitioners alleged no ground entitling them to be heard consistently with practice.

The *locus standi* of the gaslight company was objected to on similar grounds.

Pember (for petitioners): As to objection 1, it is not necessary for us to show that the clause was inserted for our protection. It is enough that an attempt is here made to repeal an enactment passed for the protection of a special class of owners on each side of the roadway under which the tunnel will run, of which class the petitioners form a very large majority. But the objection itself is unfounded, as will be seen on reference to the petition of 1871.

Salisbury (for promoters): We withdraw that objection.

Pember: Then the case stands thus:—The same promoters are endeavouring, in 1872, to repeal a clause inserted in their Act of 1871 for these same petitioners, yet they deny our right to ask the Committee to retain this very clause.

Mr. RICKARDS: As Mr. Salisbury withdraws the first objection, we will hear him upon objections 2 and 3.

Salisbury: Let my learned friend first finish what he has to say, or he will practically have the right of reply to my arguments.

The CHAIRMAN: We conceive the case to be *prima facie* so strong on the part of the petitioners, that we are of opinion you had better address yourself to these two objections.

Salisbury: Our point was last year, and still is, that the general law protects the petitioners. We went further, however, in the Act of 1871, and specially provided that if any owners, lessees, or occupiers, along the roadway above the tunnel, sustained injury through the construction of the works, or the working of the railway, they should receive compensation, the amount to be settled by arbitration. The present

bill does not in the least prejudice the petitioners' right to this compensation.

Mr. RICKARDS: The Act of 1871 gives them compensation if they are blown up by your gun-powder; but they do not want to be blown up, and section 11 protects them from such a risk?

Salisbury: The petitioners were entitled to notice of our intention to propose the repeal of this section, but they did not raise any such objection as is provided for under S. O. 29 (alteration or repeal of statutory provisions). Moreover, the great bulk of the petitioners are lessees and occupiers. The corporation of Liverpool are owners of the fee, and petition both as owners and as a public body, their *locus standi* not being objected to. The petitioners are therefore represented by the corporation, who petition in the same terms.

The CHAIRMAN: But of fifty-four persons who signed the petition, fourteen are owners?

Salisbury: The petitioners may be frightened but they cannot be damnified, because our existing Act provides them with ample compensation, and they are not entitled to a hearing before the Committee on the ground that they may be frightened.

The CHAIRMAN: They may be hurt as well as frightened?

Salisbury: Then they will receive compensation.

Mr. RICKARDS: Their representatives may be compensated.

Aspinall, Q.C. (for the gas company): We did not petition against the bill of 1871, but section 11 exists for our benefit as well as for that of other inhabitants, and we are entitled to oppose the repeal of it.

Mr. RICKARDS: I do not think our decision will turn upon the question at whose instance the clause was inserted, but whether any substantial protection is taken away under the bill from the parties to whom it was given by the former Act.

Aspinall: We have an easement in the streets, and an easement is always recognised as property; in fact, we are actually rateable in respect of it. The promoters propose to construct works under our property, and although it is true we are not owners of the soil, nevertheless our property is likely to be injured. A man having a private right of way over land which a railway company propose to take away from the owner, would be heard against the bill. So in the case of surface land belonging to one owner, while the minerals under the surface belong to another. If a railway company proposed to go below the surface, the owner of the surface land would be entitled to appear, on the ground of apprehended injury. As to the objection that we are protected by the general law, the very existence of the special clause how to be repealed is conclusive evidence that the general law is insufficient. Then our interests are distinct, both from those of houseowners and from those of the corporation.

Salisbury (in reply): We do not touch the property of the gas company, and they are not owners of an inch of land through which we pass. We are going about twenty-five feet below their mains.

Aspinall: Our mains will be within a few feet of the crown of the arch of the tunnel.

Salisbury: We do not touch them; and if we injure them, section 21 of the Railways Clauses Act, 1845, sufficiently protects them.

The CHAIRMAN (after deliberation): The *locus standi* of Owners, lessees, and occupiers of property in Great George Street and Berry Street, in the borough of Liverpool, is *Allowed*. The *locus standi* of the Liverpool gas company is *Disallowed*.

Agent for Owners, &c., Baines.

Agents for Gas Company, Dorington & Co.

Agents for Bill, Wyatt & Co.

GREAT WESTERN RAILWAY AND SWANSEA CANAL COMPANIES' BILL.

10th April, 1872. — (Before Mr. WYNN, M.P., Chairman; Sir T. E. COLEBROOKE, M.P.; and Mr. RICKARDS.)

Petition of (1) MESSRS. THOMAS CORY and FRANK ASH YEO.

Canal—Transfer of, to Railway Company—Single Traders—Colliery Owners—Private Tramway to Canal—Mineral Traffic on—Rates and Tolls.

A bill for the transfer of a canal to a railway company was opposed by two colliery proprietors, freighters of minerals on the canal, who urged that the railway company would have no interest in developing traffic on the canal, and that as they had constructed, at their own expense, a private tramway to the canal, and shipped large quantities of minerals by means of it to the neighbouring port of Swansea, they would be seriously prejudiced in the conduct of their business by the proposed transfer:

Held, that the construction of the tramway by the petitioners did not take the case out of the ordinary category, and that, as single traders, the petitioners had no *locus standi*.

The bill was one for enabling the Great Western company to construct railways from the Swansea branch of their railway to the Swansea Vale railway, for vesting in them the Swansea canal navigation, and for other purposes.

The petitioners were proprietors and lessees of collieries, the produce of which was now transported to the port of Swansea over the Swansea canal. They alleged that in 1871, 120,000 tons of

minerals were so forwarded by them; that they had expended large sums in developing these collieries, and in constructing a tramway, giving access to the canal; that although the bill (section 29) required the Great Western company to keep the canal in such good order and condition that it should at all times remain open and navigable, there was no sufficient security that the provisions in the Canal Act would be maintained in full force as intended by Parliament, for the benefit of the district; and that it was contrary to public policy to place this canal in the hands of a railway company whose interests might be opposed to the development of traffic on the canal, and opposed, therefore, to the interests of the traders and freighters now using it.

The *locus standi* of Messrs. Cory and Yeo was objected to, because (1) the petitioners make no allegation upon which they are entitled to be heard, unless as traders or freighters on the Swansea canal; (2) they are not entitled to be heard in that character, being only one firm or company out of a numerous body of traders or freighters whose interests they do not claim to represent; (3) petitioners cannot be heard consistently with practice.

Coates, Parliamentary Agent (for petitioners): As the petitioners have constructed a tramway to the canal, their position differs from that of ordinary traders who may only have wharves upon the canal, or, who merely use the canal for purposes of transit. As to the objection that the petitioners are single traders, there is no body who can represent them, and the fact that they are not only large freighters, but have constructed works subsidiary to the canal, distinguishes this case from cases where individual traders have been refused a hearing. The *Swansea Canal Bill*, 1865 (Smeth. 123-4) is in point; and none of the later cases are inconsistent with that decision.

Rodwell, Q.C. (for promoters): This is the case of a single trader, and upon the recorded precedents the petitioners cannot be heard. (*Caledonian and Scottish Central Railway Bill*, 1865 (Smeth. 126); *Ely and Ogmere Railway Bill*, 1865 (Smeth. 99); *Festiniog Railway Bill*, 1869; (Cliff. & Steph. 70). The principle is not affected by the fact that the petitioners have expended money upon a tramway, for the purpose of establishing a communication between their own works and this canal. Their interest is an interest common to a class, but the petitioners alone oppose the bill. If every individual trader were allowed to appear, there would be no end to the enquiries in this Court. There are in the district traders as important as the petitioners, who do not oppose the bill. The petitioners seem to differ in their views from all the rest of the trade, and raise objections of an ordinary character, probably for the sake of obtaining concessions as to rates. If the main body of traders and freighters in the district agreed in their view of the effect of the measure, they would then possess a *quasi* representative character here, but these petitioners have no right to be heard in support of their individual trading interests. In the *Swansea* case the pe-

titioners were invested to some extent with a representative character.

The CHAIRMAN (after deliberation): The *locus standi* of the petitioners is *Disallowed*.

Locus standi Disallowed.

Agent for Petitioners, Coates.

Petition of (2) NEATH AND BRECON RAILWAY COMPANY.

Railway—Canal—Transfer—Apprehended Abandonment of—Competition—Diversion of Traffic—Running Powers—Tramways; Right of Constructing—Indefinite Powers over Land—Mine Owners—Quarry Owners—Way-leave Across Existing Railway—Conferring only limited locus standi on Company—Landowners.

Under their Act of incorporation (passed in 1794) a canal company, with a view to develop the mineral traffic of the district, were authorised, upon the requisition of any owner or lessee of mines, quarries, or other works, to construct a tramway to the canal, over any lands within eight miles of it. The Great Western railway company now presented a bill transferring to them the undertaking, and (by Clause 24) vesting in them all the existing powers of the canal company. The bill was opposed by a neighbouring railway company, on the ground (*inter alia*) that the whole of an authorised line of theirs, then in process of construction, would be within the eight-mile limit, and that it would be inexpedient to continue to a competing railway company the large powers of construction originally given to the canal company:

Held, that the petitioners were entitled to appear against the bill, but that as no new powers were sought, and no land of theirs was specifically affected, they were not entitled to the unlimited *locus standi* given to an ordinary landowner whose land is taken, but must be restricted in their opposition to Clause 24, and so much of the preamble as related thereto.

The petitioners claimed to be heard as landowners, and on the ground of competition; and they objected to the transfer of the canal, urging the importance of maintaining it as a separate and independent means of communica-

Under the Canal Act (passed in 1794) the company were empowered, at the instance of mineral or quarry owner, lessee, renter, pier, or any proprietor of ironworks within eight miles of any part of the canal, to make railways or waggon-roads "over, or under the lands of any other person, or across any highway or highways, or over any road or roads," or to erect bridges over any rivers, brooks, or water-courses, for conveyance of minerals to or from the canal; the refusal of the company to construct works, the landowners or other persons making the application were empowered to do at their own proper expense, "without the consent of the owner or owners," of intervening persons, but on payment to them of the costs. This compulsory power would herebefore be vested in the railway company, and the petitioners objected to the bill on that

locus standi of the railway company was denied, because (1) no lands, &c., of theirs were interfered with, and none of their rights or interests affected so as to entitle them to be heard; (2) the petition contains various statements not relevant to the objects and provisions of the bill, and discloses no sufficient case of injury; (3) the petitioners cannot be heard consistently with practice.

Mr. Somers: Q.C. (for petitioners): By the agreement with the Swansea Vale Railway, we are bound to run a certain number of trains over that line to and from Swansea, and our junction line is open, our system will be the shortest and best route between the two counties, the South Wales mineral fields, and Swansea. Again, under statutory powers, we hold land at Swansea harbour, where the terminus is, and shall build a station there when the junction is completed. A considerable portion of the proposed railways will run along the Swansea Vale railway and the canal, and will divert traffic from our system, carrying it by a more circuitous route. In question of competition, however, distance is immaterial.

For example, the Midland compete with the Great Western for goods traffic from Bristol down *via* Birmingham, though the Great Western runs on straight. At present, too, the company hands over traffic to every railway without favour; but when the Great Western there it will get every ounce of traffic now goes upon the canal, and will probably be so diverted the traffic and regulate the canal to cause the canal to be abandoned. It is here there is a clause in the bill providing that the canal shall be kept open for navigation; but after three years hence, the Great Western has power to turn the canal into a railway, and had not been heard against such a proposal, as it would be said that it was only the removal of an existing means of communication.

At present we have to deal with the railway company. It will be a different thing if we have to deal with a competing railway company.

In the *Clyde Lighthouses Bill* (2 Cliff. & 42), a *locus standi* was allowed to petitioners who complained that they would be subjected to a new taxing body. Our claim

as landowners arises in this way:—Section 24 of the bill authorises the Great Western railway company to exercise all the rights and powers of the Canal company, including a power (conferred by the Canal Act of 1794) of making railways or waggon roads through or upon any lands within a distance of eight miles from any part of the canal. However useful such a power might be in 1794, it would be highly injurious and even dangerous to us if the power were vested in a company like the Great Western; for the whole of the Swansea Vale railway, and of our junction line, is within the eight-mile limit. Under this clause the Great Western company might, without notice to anybody, carry a line of railway to every colliery from which we derive traffic, and compete with us there; all that is necessary under the Canal Act is that this should be done at the instance of some owner of collieries, iron, or other works.

Mr. Rickards: Your claim as a landowner would be against section 24, authorising the railway company to exercise the rights, powers, and privileges of the canal company?

Somers: As landowners, liable to be affected under the Act, we are entitled to an unlimited *locus standi*.

Mr. Rickards: If a man's land is taken under the bill, for the purposes of the proposed works, he is entitled to a landowner's *locus standi*; but here, if you succeed in striking out section 24, all interference with your land will be at an end.

Somers: In a case where indefinite powers are sought over land, I contend that we should have a much greater right to appear against the whole bill than where powers are sought to take specific land.

Rodwell, Q.C. (in reply): The Act of 1794, so far from giving rights or privileges to the canal company, imposed an obligation upon them in favour of mineowners, who desired the construction of a railway to the canal.

Mr. Rickards: Under the Act, after the landowner has put the company in motion, they are "authorised and empowered" to construct the railway.

Rodwell: The petitioners seem to assume collusion between a landowner and the company; but the words of the Act are, that the owner must "deem it expedient or necessary" that the railway should be constructed.

Mr. Rickards: A mineral owner may apply to the company in good faith, but the result to the petitioners will be the same.

Rodwell: The power conferred by the Act amounts to nothing more than a way-leave, similar to those which exist in the colliery districts. It does not give the railway company roving powers to go where they please; it only continues to an owner of mines or quarries the right of bringing his produce down to the canal by means of a tramway.

The *Chairman*: The words of the Act of 1794 are very large and very strong; and by section 24 of the bill, you adopt them.

Rodwell: As to competition, the line of the petitioners is only a link in the chain from Hereford to Swansea; they only get to Swansea by running powers, and it has been held, over and

over again, that running powers confer no right of *locus standi* on the ground of competition. The Swansea Vale railway company, over whose line the petitioners run, will be heard; their *locus standi* has not been objected to.

Mr. RICKARDS: How much of the whole route, from Swansea to Hereford, would be composed of the Neath and Brecon line?

Rodwell: 18 miles out of 90.

Somerset: We say 25 out of 70.

Mr. RICKARDS: Is the rest of the route in the hands of one, or two companies?

Rodwell: Five companies.

Somerset: But they run over each others' lines.

Rodwell: As to the canal, a clause in our bill binds us to keep it open to all traders, and therefore we cannot convert it into a railway without coming to Parliament for fresh powers. We merely propose to make a railway by the side of the existing canal; the traders may go on using the canal as they do now. Besides, the petitioners are not carriers on the canal.

The CHAIRMAN: The *locus standi* of the Neath and Brecon railway company is *Allowed* against Clause 24, and so much of the preamble as relates thereto.

Agent for petitioners, Bell.

Agents for bill, Sherwood & Co.

LEEDS IMPROVEMENT BILL.

10th April, 1872.—(Before Mr. ST. AUBYN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of OVERSEERS, SURVEYORS OF HIGHWAYS, AND INHABITANTS OF ROUNDHAY.

Improvement Bill—Public Park—Extension of Boundary—Borough v. outside Districts—Transfer of Jurisdiction—Corporation—Overseers, Surveyors of Highways, and Inhabitants—Representation—Borrowing Powers—Rates—Exemptions from—Agreements with County Justices.

A bill was promoted by a municipal corporation to increase the sum which a former Act had authorized them to expend upon a public park, and to make provision for including the site of the intended park at Roundhay within the municipal jurisdiction for police purposes, by arrangements to be made with the county justices. Originally, the bill contained a clause exempting the site of the park from all local assessments whatever, but this was struck out. There were no local authorities in the district of Roundhay, within which the park was

to be situate, but to the petition against the bill 40 signatures were attached, including those of the overseers, surveyors of highways, the vicar, churchwardens, and most of the owners and occupiers of land in the district of Roundhay, the total population numbering 580. The petition was silent as to any meeting, but it was asserted that a meeting hostile to the bill had, in fact, been convened:

Held, that under the circumstances, the petitioners were entitled to a hearing against those portions of the bill relating to the rating of the park, police jurisdiction there, &c.

This was a bill "to enable the mayor, aldermen, and burgesses of the borough of Leeds, to make new, and improve existing, streets; to make further provision with respect to streets and buildings; to raise further moneys for the providing of parks; and for the further and better government of the said borough, and for other purposes." By the Leeds Improvement Act, 1866, the corporation were empowered to purchase, by agreement, lands in the borough, or its neighbourhood, "for the purpose of providing additional places of public use or recreation," and to sell such parts of the lands purchased as they might think desirable. The bill recited that the corporation had entered into a provisional contract for the purchase of Roundhay Park, subject to their obtaining from Parliament powers to raise the necessary funds; and the bill accordingly proposed to increase the amount which, under the Act of 1866, might be applied to purposes connected with parks or places of public use and recreation, from £50,000 to £200,000. The bill originally included a clause (which was struck out) exempting the park, and all buildings upon it, from local rates. It provided, however, that the park, and its approaches and boundary roads, should be deemed within the borough, and should be subject to the same jurisdiction in all respects as the remainder of the borough; and that the corporation and justices of the West Riding might enter into any agreements they thought fit for exempting the park, &c., from the police jurisdiction of the county.

The petitioners, 40 in number, claimed to represent the district of Roundhay, in which there were no public authorities in the usual sense, alleging that "the rights and interests of the inhabitants of Roundhay, of whom your petitioners represent a large proportion, and of the several local authorities having power to levy rates within the township, are proposed to be interfered with, and under the powers of the bill the township will be injuriously affected, and your petitioners object thereto."

The *locus standi* of the petitioners was objected to, because (1) no land or property of theirs can be taken by compulsion under the

(2) their rights, &c., are not interfered with; (3) it is not true that the petitioners want the rights and interests of the inhabitants or local authorities of Roundhay; no notice of inhabitants has been duly called, and no petition has not been submitted to any meeting; such inhabitants or local authority; in conformity with practice, therefore, it can only be considered that of individuals not entitled to be heard as such; (4) petitioners are not the vicar or other authority, &c., of Roundhay, in the meaning of the S. O.; (5) if the inhabitants and ratepayers are entitled to be heard, it is only upon a petition emanating from and representing the inhabitants and ratepayers generally; (6) petitioners are not the proper parties to represent the interests of the West Riding with reference to questions of taxing, or jurisdiction; (7) not being inhabitants or ratepayers of Leeds, petitioners have no right to be heard as to the policy of acquiring or selling out as a public park, or otherwise appropriating the Roundhay estate; (8) even if petitioners were ratepayers or inhabitants of Leeds, would not be entitled to be heard against a petition promoted by the corporation; (9) they have no pecuniary interest.

Mr. LITTLE: There is no municipal corporation, and no board of health, and no sewage board in Roundhay. The only public authorities in the township are the overseers and the surveyors of highways. Both of these sign the petition, as do likewise the vicar and churchwarden, and the owner of land but one, and every occupier in Roundhay. The Roundhay estate, which the corporation propose to acquire, contains about 773 acres, and for this they are to pay £139,000. But the portion which they propose to convert into a park contains only 100 acres. As they take power, under the Act, to sell any lands not required for the uses of the park, or of new streets, the ratepayers are virtually entering into a large speculation, with nearly 600 acres. I allege in our petition that it is opposed to public policy for corporations to become speculators, on a scale of such enormous magnitude. To meet the objection entertained by the magistrates of the West Riding to a transfer of jurisdiction, the promoters contemplate the entire police and criminal jurisdiction of the township of Roundhay shall be assumed by the authorities of the borough. We object to the township being thus practically incorporated with the borough, and its rights and interests sacrificed for the convenience of Leeds, without any compensating advantage. The enhancement of this park must largely increase the cost of repairing the highway. But, in the proposed transfer entitles us to a *locus standi*.

MR. RICKARDS: Against that part of the bill? **SARGOOD, Serjt. (for promoters):** The transfer is compulsory.

Mr. LITTLE: The first part of Clause 40 says, "The &c., shall be deemed to be within the township. That is certainly compulsory; and, furthermore, the clause enables the justices, who do represent us, and the corporation, to enter into agreements. All the approaches to this

park traverse part of Roundhay. Who are the persons to be heard before Parliament, if the overseers and surveyors of highways, and owners and occupiers in Roundhay, are not?

SARGOOD: There are 583 inhabitants in the place, and the petition has only 40 signatures.

LITTLE: Including men, women, and children, in Roundhay, there are 580 persons. Our petition is signed by the two overseers, two surveyors, the vicar, the churchwarden, and a number of gentlemen, either owners or occupiers of land.

THE CHAIRMAN: Was this petition adopted at any meeting?

LITTLE: No; but there was a meeting held.

[**SARGOOD** objected.]

LITTLE: You deny the assertion made by us, that we represent the inhabitants of Roundhay. It then becomes a matter of evidence. I shall prove that a meeting was held, at which a committee was appointed to prepare the petition.

SARGOOD: The petition does not mention any such fact; and it is not usual to make statements in support of a petition, when this has been found too weak to hold water. In our objections, we expressly say that no meeting was called; and the real question is, whether upon the face of the petition grounds for a *locus standi* are disclosed.

MR. RICKARDS: The petition purports to be "of the overseers and surveyors, and the undersigned owners and occupiers." It is stated that all the owners and occupiers sign except two. Is that controverted?

SARGOOD: Yes.

MR. RICKARDS: We need hardly go into evidence on that point.

LITTLE: Our petition actually says, "of whom your petitioners represent a large proportion." I will explain why the petition was not submitted to the meeting.

MR. RICKARDS: You need not give proof of the meeting.

LITTLE: In the bill, as introduced, they proposed to exempt the park from all parochial and local rates, impositions, and assessments whatever. That, by itself, would give us, as ratepayers in the district, a clear *locus standi*.

SARGOOD (in reply): The rating of the district is in the hands of the guardians of the Leeds union, who are the proper persons to petition.

LITTLE: It is the overseers who levy, collect, and pay over the rates, on being told by the guardians what their proper proportion amounts to.

SARGOOD: In any case, sections of the ratepayers are not the persons to petition.

MR. RICKARDS: What do you say to the surveyors of highways? Are they not entitled to object to the abolition of rates upon a part of their district?

SARGOOD: They do not allege that it is their district; and they are not the proper representatives of the ratepayers. It is difficult to know in what capacity these petitioners come forward. They begin by calling themselves "owners and occupiers," and further on constitute themselves the representatives of "a large proportion of the inhabitants"—in what capacity nobody knows. The petition discloses

freely the policy of establishing this park, which was sanctioned in 1866; but the allegations of individual injury are altogether loose. There is no actual transfer of jurisdiction: the bill merely allows the corporation to make future arrangements with the justices of the West Riding. And these justices petition against the bill.

Littler: Practically, they petition in favour of it, if a certain thing is done.

The CHAIRMAN: The *locus standi* of the overseers, surveyors, and inhabitants of Roundhay is *Allowed*, against so much of the preamble and sections of the bill as relates to Roundhay Park.

Sargood: The words used by the Court would give them a right to question the policy of buying the park, and their petition does not warrant them in raising that question.

[Ultimately, the *locus standi* was, by mutual consent *Allowed* against Clauses 39 (park exempt from rates); 40 (police jurisdiction over park); 41 (power to close park); and 42 (power to make bye-laws as to); and so much of the preamble as related thereto.]

Agents for Bill, *Simson & Wakeford*.

Agents for petitioners, *Sherwood & Co.*

RHYL IMPROVEMENT BILL.

10th April, 1872.—(Before Mr. WYNN, M.P., Chairman; Sir T. E. COLEBROOKE, M.P.; and Mr. RICKARDS.)

Petition of (1) OWNERS, LESSEES, OCCUPIERS, and RATEPAYERS.

Improvement Bill—Owners, Occupiers and Ratepayers—Representation—Extension of Limits—Diversion of Sewer—Injury to Bathing Grounds—Compulsory Taking—Building Land—House Property—Foreshore—Rights affecting—Bridge—Toll-house.

Practice—Lands—Compulsory Taking—Sufficiency of allegations as to—Reference directed by Court to Notice and Book of Reference.

A bill promoted by a body of improvement commissioners for the extension of their district, —the boundary line, among other points, being advanced from high to low-water mark, along the seashore—and for authorising certain works, including the diversion seaward of the main sewer, was opposed by 81 owners, occupiers and ratepayers, on the grounds of probable injury to the bathing from the new outfall of the sewage, and of compulsory powers being taken over the foreshore, in which they claimed rights of property. The commissioners, as a body,

were elected by owners as well as ratepayers; and the petition was silent as to the foreshore, speaking only of "valuable building land and house property:"

Held, however, that those owners of property signing the petition, who alleged that they had received notice and whose names were to be found in the book of reference (i.e., seven in number) had a *locus standi*.

A bridge company obtained a *locus standi* against the same bill, on its transpiring that their toll-house might be taken for the purposes of their works, although this circumstance was not mentioned in their petition.

The bill was one "to extend the limits of the jurisdiction of the Rhyl improvement commissioners, and to enable them to make new and extend existing roads, to construct works for sewerage and sewage utilization, to acquire the undertakings of the Rhyl bridge company, and the Rhyl promenade pier company, limited, and to make further provision with respect to new streets and buildings, and the improvement and government of the town of Rhyl."

The petition was signed by 81 persons, who described themselves as "owners, lessees, and occupiers of property, and ratepayers within the limits of the jurisdiction of the Rhyl improvement commissioners." It stated that "some of your petitioners are the owners of very valuable building land and house property within the township of Rhyl, in the county of Flint, and have received notice of the intention of the said commissioners to take compulsory powers over their property, and to appropriate a portion of such property to the purposes of the said bill; and others of your petitioners are ratepayers within the said township; and several of your petitioners are occupiers of houses on the promenade, abutting on the seashore at Rhyl aforesaid; and they object to the said bill, as prejudicial to their property and interests." The petition further set forth that the prosperity of the town was mainly attributable to its extensive and safe bathing grounds, and that by the proposed diversion of the main sewer under the bill, sewerage would be liable to be thrown up along the sea shore and bathing grounds, to the serious damage of the petitioners, and the probable ruin of Rhyl as a place of fashionable resort.

The *locus standi* of the petitioners was objected to, because (1) they have no right to be heard against a bill promoted by the body that represents them; (2) it is not proposed to take any "valuable building land and house property within the township of Rhyl" belonging to the petitioners or any of them; (3) it is not alleged that the petition emanates from any meeting or has the sanction of any authority entitled to petition under the S. O., or according to practice; (4) no increase of rates within the township is proposed; (5) the petitioners do not

ly represent the district, and it is not hat it will be injuriously affected; (6) sion of the main sewer is within the powers of the improvement commis- and it is not alleged that the petitioners dly are interested in the sea shore or grounds to which injury is apprehended; ry, moreover (even if it existed), would emote; (7) the petition is couched in id general terms, not sufficient to give ssary information to Parliament and the s; (8) similar points are raised at eater length in another petition de- by the same agents, and to this petition tion has been made; (9) petitioners sufficient interest.

Lloyd, Q.C. (for petitioners): Under , the limits originally assigned to the s by their Act of 1852, are extended. e compulsory powers over lands; and sion of "lands" is made to include re," of which we are owners.

Stevens (for promoters): The peti- tion mention the foreshore; and unless uest in the foreshore be alleged, the s cannot travel beyond the terms of their

RICKARDS: If the petitioners say that land will be taken, and some of this land is , is not that enough?

Stevens: The petitioners describe themselves at minuteness; and the "very valuable land and house property" they speak of ly mean foreshore.

Rickards: We have building property, and the s adjoins it. The promoters extend their on to low water mark; and the lands d include a great extent of foreshore front of the town of Rhyl. The value ilding-land would be gone if the fore- prejudicially interfered with; and they ver both to build upon, and to sell the d lands. We shall be deprived of the now joined on to, and forming part of : which we have paid. The ownership oreshore, of course, is in the Crown, anted to a subject; but the owner or of land adjoining the foreshore has ights—that, for instance, of access over he tide is low. As matters stand now, ship stops at high-water mark, but the e extended to low-water mark; hence d be an increase of rateable area. But press the claim of the ratepayers. As occupiers, their case comes within the that they have actual rights at common lting from their occupancy of property tely adjoining the sea-shore.

RICKARDS: Can you refer us to any case tablishing the existence of such a right cupiers?

Stevens: What has been decided is that, as one emeral public, you could not claim to : the sea shore, either to bathe or pick eed, or do other acts of that kind; but seems to have been questioned that hose property immediately adjoined the could pass from their land to the sea. of the owners seems too clear for t.

Mr. RICKARDS: I infer that the objection of the promoters turns upon the manner in which the ownership of the property is described in the petition?

Lloyd: Building land which we have bought adjoining the foreshore will or may lose its front- age under the bill.

Pembroke Stephens (in reply): As to the fore- shore, what is really wanted under the bill is jurisdiction over it when the tide is out. Under the Act of 1852 the improvement commissioners, who promote this bill, are elected by owners as well as by ratepayers. The petitioners, there- fore, are all represented. Only 81 persons sign the petition, out of a population of 5000 or 6000. And of these 81 the phrase "occupiers of houses on the parade abutting on the seashore" would include occupiers of houses for three weeks in summer. Of any petitioner whose land we take, I concede the *locus* at once; but the claim is made on behalf of landowners not included in the petition at all. Three classes of persons join in the petition, and each class describes its position separately. The Court is now asked to amend these definitions, given by the petitioners themselves.

Mr. RICKARDS: As to the owners, of whom the petition states that some are owners of valu- able building land and house property, I find this further allegation, that "they have received notice of the intention of the Commissioners to take compulsory powers over their property, and to appropriate a portion of such property to the purposes of the bill." Do you say that is not a good allegation?

Stevens: Notices are given much more widely than bills are afterwards framed. The injury now suggested is through the foreshore; it was perfectly open to the petitioners, if they appre- hended injury in that quarter, to have said so in their petition. But they have not done so.

Mr. RICKARDS: In your opinion, this general allegation—that they have received notices, and that it is intended to appropriate portions of their property to the purposes of the bill—is not sufficient?

Stevens: When coupled with the description of their property given in the earlier part of the petition, it is more than insufficient—it is inaccurate. If there be any person answering the description in the petition, on whom notice has been served, he should be heard; but not the others.

Mr. RICKARDS: The book of reference will show the names of the parties whose property is about to be taken. Then, comparing that book with the signatures to the petition, we shall see which of the petitioners are persons whose pro- perty may be taken under the bill.

Lloyd: That will apply to about seven of the petitioners. The names can be settled by the agents.

The CHAIRMAN: A *locus standi* is allowed to such of the petitioners as are owners of property which may be taken under the powers of the bill.

Agents for Bill, *Frankish & Buchanan.*

Agents for Petitioners, *Wyatt, Hopkins & Hooker.*

Petition of (2) the RHYL BRIDGE COMPANY.

These petitioners objected to the extension of the limits of the commissioners, within which their undertaking would, in future, be included for rating purposes; to the permissive power taken to purchase their undertaking; to the proposed diversion of the main sewer and other matters. [As it appeared in argument that notice had been served upon the petitioners in respect of their toll-house, which, apart from the purchase of the undertaking, might be removed in the progress of the sewage works authorised by the bill, their *locus standi* was conceded.]

Saunders was counsel for the Petitioners.
Agents, Sherwood & Co.

ROCHDALE BOROUGH EXTENSION AND IMPROVEMENT BILL.

10th April, 1872. — (Before Sir T. E. COLEBROOKE, M.P., Chairman; Sir. JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of (1) THOMAS CHADWICK, and OTHERS.

Municipal Corporation — Improvement Bill — Omnibus Bill — Sewers — Utilization of Sewage — Drainage — Diversion of Water-course — Mill-owners — Apprehended Injury to Water Power — Natural Stream — Common Sewer — Towns Improvement Clauses Act, 1847 — Sewage Utilization Acts, 1865 and 1867.

Under a local improvement Act, the corporation of Rochdale were authorised to provide for the effectual drainage of the town, and for this purpose to cause the local sewers "to communicate with, and empty themselves into, the sea, or any public river," and to convey the refuse "by proper channels to the most convenient site for the purpose of sale." They now promoted a bill which proposed (*inter alia*) to intercept the sewage flowing into the river Roch at its present outfall and carry it to a point five miles distant, there to be treated and utilized. The bill was opposed by certain millowners who alleged that by such diversion the flow of water in the river would be diminished, and their water-power lessened. They further alleged that a natural stream would be diverted under the bill. It was admitted by the promoters that a water-course in the borough, long since flagged over and used as a common sewer, would be

so diverted; but it was objected that the petitioners could have acquired no right of property in this sewage water, and, further, that the corporation were authorised to divert this sewage water already, both by local and public legislation:

Held, on these facts, that the petitioners had no *locus standi*.

The bill was one "for extending the boundaries of the town and borough of Rochdale: for defining and extending the powers of the corporation in relation to the improvement and management of streets in the borough, and to sewerage and police and other matters of local government, and to gas and water supply, to the cemetery, and to markets; and for other purposes." Amongst other objects, the bill proposed to enable the corporation to divert their sewage from its present outlet into the river Roch to Pilsworth, a point five miles distant from the town, and there to utilize it for agricultural purposes.

The petitioners, who were owners of woolen and corn mills on the banks of the Roch, complained that such diversion of the sewage flow would be injurious to them, and that they would not be compensated for such injury.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs, will be taken, used, or interfered with; (2) the injury alleged by the petitioners (if any such arises, which the promoters deny) is created by the Rochdale Improvement Act, 1853, and the Towns Improvement Clauses Act, 1847, incorporated therewith; (3) the petitioners could have been heard, if they thought fit, against the Rochdale Improvement Act, 1853, but having failed to petition then are precluded from opposition to the present bill; (4) the promoters only seek such powers as are contemplated by the Sewage Utilization Act, 1865, and other public Acts relating to sewage, and are acting, therefore, only in accordance with the legislation of Parliament; (5) the petitioners allege no grievance or injury entitling them to a *locus standi*.

Mundell, Q.C. (for petitioners): The effect of making the intercepting sewer will be to take away from the river a very large quantity of water and sewage, which has, up to this time, flowed into it, particularly a stream called the Lord-burn. Thus our mills will lose the benefit of portions of the present water-flow, now, of right, used by us for water-power; thereby reducing the working power of our water-wheels, and at certain seasons of the year stopping them altogether. All that the Act of 1853 does, is to incorporate parts of the Towns Improvement Clauses Act, 1847, and to say that the corporation shall, from time to time, cause to be made, under the streets, main and other sewers, necessary for the effectual drainage of the town, within the limits of the special Act. The corporation are authorised to carry these sewers through enclosed lands, and may cause them "to communicate with, and empty themselves into

the sea, or any public river, and may cause the refuse from such sewers to be conveyed by the proper channels to the most convenient site for the purpose of sale, so that the same shall be no cause of nuisance." That is clearly an authority limited to sewage proper in artificial sewers to be made or constructed under streets or through private grounds. For all that appears on the face of this Act we should have received no injury at all, and could not, therefore, have been heard against it. But, under the present bill, the corporation may not only intercept sewage, but divert any natural stream, and may intercept, besides, the water from other existing sewers and drains which we have acquired the right to, by user. The Lordburn, though tinged with sewage, consists mainly of pure water.

Clerk, Q.C. (for promoters): It is a town sewer, and is flagged and built over through its whole extent.

Mundell: Fleet Ditch is a sewer; but it is a natural stream notwithstanding.

Mr. RICKARDS: Is the source or the course of this burn known?

Clerk: The drains of the town are its source, though a watercourse may have existed there originally.

Mundell: If there was a watercourse originally, the promoters have no right to intercept the water, because they make use of it as a sewer. It feeds the river, and we can show by evidence that, though tinged with sewage, such a quantity of pure water flows through it as to constitute it a natural stream. Whether it is covered over, or not, is immaterial. If, as they allege in their objections, the promoters are only proceeding in accordance with existing legislation, they need not come here for fresh powers. As they do come here for authority to execute these works, and as we allege both a right and an apprehended injury, we are entitled to a *locus standi*.

Clerk (in reply): All the corporation seek to do is to intercept sewage; and the petitioners have no right of property in the drainage and sewage of Rochdale. Not only under the local Act of 1853 are the corporation authorised to divert the sewage of the town, but, by the general Sewage Utilization Acts of 1865 and 1867, they have the right to remove all sewage both in their own district and in districts adjacent.

Mr. RICKARDS: Is there any power enabling them to divert a natural stream?

Clerk: For the purposes of drainage, they must necessarily do so. There is not, however, on the Ordnance map, the slightest trace of any such stream as the Lordburn. It is a watercourse converted into a common sewer and receiving the sewage of that part of Rochdale, through which it runs. Apart from the bill, the corporation would have full authority, under the general Acts, to remove that sewer. We come to Parliament for power to take land compulsorily, in order to make a new drain, and, in doing so, as it is found convenient to collect all the sanitary clauses together, we insert clauses in the bill which already exist in the general Acts. The Lordburn may have been a small rivulet when there were green fields surrounding

it, and, as its name denotes, it is a channel for water; but, as far back as memory goes, it has been built over and used as a common sewer, and the petitioners can have no right of property in this sewage.

The CHAIRMAN: The *locus standi* of Thomas Chadwick and Others is *Disallowed*.

Agents for Petitioners, *Grahames & Wardlaw.*

Petition of (2) OWNERS, LESSEES AND OCCUPIERS OF LANDS, HOUSES, MILLS, MANUFACTORIES AND WORKS WITHIN THE ECCLESIASTICAL DISTRICT OR PARISH OF HEALEY.

Corporation — Improvement Bill — Municipal Boundary; Extension of—Inhabitants of outside district—Incidence of Rating—Rural district—Borough rates—Representation—Number of Inhabitants Affected—Rateable Value—Mill owners—Riparian Manufactories—Use of River—Omnibus Bill—Locus standi limited by Petition.

A corporation proposed to extend their municipal boundary, and make it identical with the boundary of the Parliamentary borough. One half of the ecclesiastical district of Healey, at present outside the municipality, but included under the bill, opposed the extension. It was objected that as there were only 31 petitioners, whereas the number of inhabitants in Healey was at least 2,000, and in the portion to be included within the municipality 1,400, the petitioners did not adequately represent the district. It appeared, however, that they represented five-sevenths in rateable value of the property in the district; and their *locus standi* was therefore, admitted.

The bill (an omnibus bill) was also opposed, in the same petition, by millowners, &c., in Healey, whose property was situated on the banks of the Roch, and who alleged that they would be restricted in their wonted user of the river for the purposes of their business. After argument, it was conceded that these petitioners also were entitled to appear, their opposition being limited by the terms of their petition.

By the proposed extension of the municipal boundary, one-half of the ecclesiastical parish or district of Healey would be comprised within

borough of Rochdale. The petitioners objected to the inclusion of any part of the parish of Healey, and alleged that the proposed extension of the municipal boundary was neither necessary nor desirable.

Their *locus standi* was objected to, because (1) no land of theirs is taken; (2) they form a very small section of the inhabitants of Healey, and do not represent such inhabitants who, as a body, do not oppose the bill; (3) no injury is alleged entitling the petitioners to appear.

Michael (for petitioners): The whole rateable value of the district is £7,200, of which we represent £5,100. We do not, however, petition as representing Healey, nor is it necessary that we should do so, because if a single inhabitant shows that his rating will be changed by the bill, that is sufficient ground for a *locus standi*. There is no local authority in Healey to represent the inhabitants, but a public meeting has been held and resolutions were passed protesting against the bill. Ours is a rural district, and the entire *status* of owners and occupiers will be changed if we are made subject to borough rates. Rochdale, like other boroughs, is burdened with a large debt, incurred for purposes from which we have derived no benefit. In the creation and application of this debt we had no voice, and our property will be deteriorated if we are now made liable for interest and principal. *The Cardiff Improvement Bill*; *Petition of the Marquis of Bute* (ante, 154) is in point. Some of the petitioners are also owners, &c., of mills and other works situate on the banks of the Roch or its tributaries, and the use of the river is essential to them. They allege that there are stringent enactments in the bill which may interfere with the conduct of their business, and they come forward to oppose those enactments.

Clerk (in reply): The question is whether the petitioners really represent the parish of Healey. There are thirty-one petitioners, whereas the population of Healey is between 2000 and 3000.

Michael: The population of the portion to be included is 1400, and I can show by the ratebooks that the petitioners represent five-sevenths of the whole rateable property of the district.

Clerk: If that be so, it is a considerable interest, and I shall not oppose their *locus standi*. As to the millowners and manufacturers, I do not know that any of their works will be actually affected; but their *locus standi* will be limited by the terms of their petition.

The CHAIRMAN: The *locus standi* of the owners, &c., of lands, mills, &c., within the ecclesiastical district of Healey is *Allowed*.

Agents for Petitioners, *Sherwood & Co.*

Agent for Bill, *Newall*.

CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL.

15th April, 1872.—(Before Mr. ST. AUSTIN, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of (1) the NORTH BRITISH RAILWAY COMPANY.

Railway — Omnibus Bill — S. O. 133 (Locus standi of Railway Companies) — Alteration of — Lands of another Company taken or used — Facilities affecting — Discretionary Power of Court — Limited, or general locus standi — Deposited Bill — Plans — Oversight in — Filled-up Bill — Landowners, Private and Corporate.

The S. O., defining in what cases railway companies shall be heard, formerly declared that where a railway bill contained provisions for taking or using lands, &c., of another company, or for granting facilities, a petitioning company should be entitled to be heard against the whole bill. In the S. O. for 1872 the words "against such provisions or" were introduced. The Court was now asked to exercise this discretion by limiting the *locus standi* of a petitioning company in a case where the promoters of an omnibus bill had, by an oversight in their bill as deposited, asked for compulsory powers of taking certain lands belonging to the petitioners, but in their filled-up bill had inserted an express proviso that such lands should not be taken, otherwise than by agreement:

Held, that under the discretionary powers given to the Referees in the amended S. O., no distinction can be drawn between a petitioning railway company, whose land is taken, and a private landowner, who, according to the practice of Parliament, would in such a case possess a general *locus standi*; and that the discretionary power of limiting the *locus standi* will be confined to cases in which engines or carriages are proposed to be run, or other facilities granted, upon the line of the petitioning company.

This was an omnibus bill, which empowered the Caledonian Company (*inter alia*) to take certain lands adjoining their Granton and Haymarket branches, in the parish of St. Cuthbert,

near Edinburgh, belonging to the petitioners, the North British Company. A limited *locus standi* against this provision was conceded, but the petitioners sought and the promoters resisted, a general *locus standi* against the whole bill. The other objections to the *locus standi* need not be specified.

Clerk, Q.C. (for petitioners): We make a great many other allegations which equally entitle us to a *locus standi*, but it suffices that the promoters have given us notice of their intention to take our land compulsorily, and that this land is shown upon their deposited plans. Under those circumstances we are entitled to be heard generally against the bill. (*London and North Western Bill*; *Cliff. & Steph. 62*—"the *Post* case." *Dundee Ferry Bill*; 2 *Cliff. & Steph. 37*; and *Rhyl Improvement Bill, ante, 252.*)

Venables, Q.C. (for promoters): The S. O., prescribing in what cases railway companies shall be heard, has been modified since last year. Formerly it declared, "Where a railway bill contains provisions for taking or using any part of the lands, railway, stations, or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition against the preamble and clauses of such bill." Now the opposing company is to be heard, in the discretion of the Court, "against such provisions," or against the preamble and clauses. If ever there was a case in which this discretion should be used, it arises here, for, as the petitioners know, it is entirely by an oversight that we sought these compulsory powers over their land, and in the filled-up bill we have expressly guarded against taking any of their land otherwise than by agreement. The compulsory power affecting them is given simply by incorporating the Lands' Clauses Act, which was required for other purposes. Technically, they have a right to deal with the bill as deposited; but in the committee-room they will be told that their grievance is removed; and it will be a great hardship upon us if, through this oversight, petitioners obtain a right to oppose our whole bill.

Mr. RICKARDS: Under the new S. O., it is discretionary with the Referees to give railway companies a limited *locus standi* in cases where the bill contains provisions for running engines or carriages, or for granting facilities; but we feel a difficulty in distinguishing between the case of an individual landowner and that of a corporate landowner, whether a railway company or any other kind of company or corporation. The difficulty is to say that an individual landowner shall, but that a railway company shall not, have a general *locus standi* in respect of land taken.

Venables: I submit that as the S. O. draws a distinction, and gives a discretion, it becomes the duty of the Referees to exercise that discretion.

Mr. RICKARDS: The S. O., as altered, may be read as giving a discretion which should be exercised according to the powers that are sought. For instance, it may be construed this way: that whereas formerly the Referees were bound to grant a general *locus standi* against a bill for

running engines or carriages, or for granting facilities over another line, they may now give a partial *locus standi* in such cases, reserving to petitioning railway companies the general *locus standi* of a landowner when their lands are taken. I think it is competent to us to read the S. O. distributively, construing it to mean that we must give a general *locus standi* where land is taken, thus assimilating the case of railway companies to the case of private landowners; but that we may in our discretion limit the *locus standi* where mere facilities are sought for.

Venables: To construe the S. O. so, would be not to construe it distributively, but the reverse. In construing it distributively you must apply each of the first clauses of the sentence to the last clause; whereas the reading suggested by the Court would deprive the first clause of the sentence of any meaning whatever, and the S. O. would be interpreted as though the words "for taking or using any part of the lands," &c., had not been inserted. If no force or meaning is to be attributed to those words, the S. O. would surely have read simply "where a railway bill contains provisions for running engines or carriages" and so on. As to any distinction which may arise between the case of railway companies and private landowners, I say that those who made the S. O. made that distinction, and the responsibility rests with Parliament, not with the Referees. The general right of landowners does not depend on the S. O. at all; it depends on the practice of Parliament. Parliament has chosen to distinguish railway companies from other landowners. I submit that it is impossible to give effect to every part of the S. O. except by construing it as giving the Referees a discretion, even where the land of a railway company is taken; and this is a case in which, if ever, such a discretion should be exercised and the *locus standi* limited.

The CHAIRMAN (after deliberation): The *locus standi* of the North British Company is *Allowed*.

Agents for petitioners, *Sherwood & Co.*

Petition of (2) JAMES BAIRD and OTHERS.

Company—Preference Shareholders—Representation—Distinct Interest—Debenture Stock—Application of New Capital—S. O. 132 ("in what cases shareholders to be heard.")

For purposes of *locus standi*, the rights of preference shareholders appear to be in many respects distinct from the general interest of the company, and therefore upon a petition by Messrs. Baird against a bill for the creation of new share and debenture capital, and for other purposes the issue of

the preference shareholders might be prejudiced:

Held, (following a previous decision in the case of the same company and the same petitioners) that Messrs. Baird were entitled to a limited *locus standi* against the capital clauses of the bill, and against so much of the preamble as related thereto.

The bill was one authorizing the Caledonian company to construct works and purchase plant, and for these and other purposes to raise the sum of £930,000 by the creation of new ordinary shares or stock, to borrow £309,000 on mortgage, and to issue debenture stock.

The petitioners, as preference shareholders in the Caledonian company, to the amount of £250,000, and as holders of £500,000 in the stocks of other companies guaranteed by the Caledonian company, alleged that they had a distinct interest from other shareholders, and that their rights would be prejudicially affected by the bill.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken; (2) they are not affected by the bill otherwise than as shareholders in the Caledonian railway company, and in other companies guaranteed by that company, all of which are incorporated companies, and the petitioners have no distinct interest entitling them as such shareholders to be heard against the bill; (3) they are not entitled to be heard in respect of any alleged misapplication by the promoters of their funds in time past, nor in respect of any anticipated misapplication of the funds to be raised under the bill, such questions being matters for determination by the Courts of Law and Equity; (4) the petitioners cannot be heard according to practice.

Bidder (for petitioners): Exactly the same question arose two years ago when the Caledonian railway company brought in a similar bill to this, and the *locus standi* of Messrs. Baird was allowed upon a similar petition. (Cliff. & Steph. 163.) In 1868 the company sought for power to raise £1,600,000 of additional capital, and, upon our opposition, that capital was reduced to £800,000. In the following year we succeeded in modifying the power sought by another bill promoted by the company, and procured a specific appropriation of the purposes for which the greater part of the capital was to be applied. We say that the capital to be raised under the bill is excessive, and is in reality sought to be applied to purposes not disclosed; that capital heretofore raised for specific purposes has been misapplied; and the past history of the company justifies us in maintaining that the directors should not be entrusted with the power now asked for, without an appropriation of the new capital to specific purposes. We are not only preference shareholders in the Caledonian railway, having a distinct interest from the rest of the company, but we hold preference shares in guaranteed companies, who have no voice whatever in the promotion of the bill. In fact, those guaranteed companies are in

the position of creditors of the Caledonian company. The debenture capital to be raised will take precedence of our preference shares, and will to that extent be a postponement of our dividends, besides depreciating the market value of our shares. If a large sum is raised by means of this debenture capital, it may yield an ultimate increase of revenue, and be to the ultimate advantage of the shareholders generally whose dividend is a fluctuating one; but in the meanwhile it increases the annual charge and impairs our security. Moreover, if we lose our preference dividend in any one year, we have no power of recouping ourselves in any other year, and should get no benefit from an ultimate increase of profits divisible among the general shareholders. In other words, if expenditure results in present depression and future prosperity, we suffer from the depression but gain no advantage from the prosperity. Of the new share and loan capital, £850,000 is unassigned, and is applicable to any purpose the directors may think proper. There is nothing to prevent them from spending £200,000 in a renewal of rolling stock, which ought to be renewed out of revenue (when ordinary shareholders alone would be affected) instead of out of capital.

Mr. RICKARDS: Which has the priority—the guaranteed companies, or the mortgagees of the Caledonian company proper?

Bidder: Some of the guaranteed stocks rank before, and some of them rank after, the debenture stock. We are shareholders in guaranteed companies of both kinds.

Venables, Q.C. (in reply): The Messrs. Baird have no more right to be heard than any other preference shareholders in the Caledonian company. As to the guaranteed companies, their right to be heard under their common seal is an open question; but shareholders in those companies certainly have no separate right of petitioning. Between them the Lancashire and Yorkshire and the North-Western companies probably guarantee some 50 companies. Can it be contended that every shareholder in every one of those companies is entitled to be heard against the amalgamation bill now pending? If the guaranteed companies here think the bill will prejudice their security, it is for them to say so; but they do not petition, because they know well that their security remains unimpaired. No case can be cited in which the shareholders of guaranteed companies have been allowed to oppose such a bill, and the only case in which a *locus standi* has ever been given to preference shareholders was against a bill opposed by Messrs. Baird themselves. (Cliff. & Steph. 163.) That, however, was a bill for the purchase of land, and as the Messrs. Baird had in a former year successfully objected to the purchase of that very land, they might well be admitted to appeal against a reversal of the decision of the previous year. Moreover, litigation was then going forward between the petitioners and the company, and Messrs. Baird alleged that the effect of the bill would be to prejudice their rights in that action.

Bidder: But their *locus standi* was also allowed against the clause as to application of capital.

Venables: You would have had a hundred petitions by preference shareholders if it had

been supposed that they had a right to be heard against bills promoted by the company. Every farthing of the money we raise will be applied in increasing the value of the property of the company, and, therefore, in increasing the value of the petitioners' security.

Mr. RICKARDS: I am inclined to think that the only question the Referees have to consider is whether the petitioners have a distinct interest, because if once we go into the question whether it will be for their advantage in the long run, we enter upon merits. If a petitioner shows that he has a distinct interest, and does not think the bill will be for his advantage, I doubt whether we can go into the question whether the bill will really be for his ultimate advantage.

Venables: The distinct interest of the petitioners here is surely nothing more than this—that the company shall be solvent.

Mr. RICKARDS: The interest of the preference shareholder is that his prospect of getting his preference dividend shall not be endangered, and if it be proposed to rank any claims before his, a possibility does thereby arise that his security may be endangered.

Venables: If the Referees are of opinion that every preference shareholder has a right to be heard against every capital bill, then the Messrs. Baird may have a right to be heard. Shareholders are not entitled to be heard unless their interests are "distinct from the interests of the company." Now, is it to be presumed that the company will spend £1,200,000 in such a way as to injure its own interests?

Mr. RICKARDS: Such things have been.

Venables: Preference shareholders have votes, and are, therefore, enabled to influence the policy of the company; but Messrs. Baird do not allege that they dissented at the Wharnclyffe meeting. When a preference shareholder invests money on that security he becomes a partner, takes his chance of the policy of the company, and concedes that he is bound by the governing body, and is represented by the common seal. If this were a bill to convert a large part of the company's stock into pre-preference stock, his interest might then be distinct from the general interest of the company.

Mr. RICKARDS: Does not the creation of a new mortgage debt produce the same effect?

Venables: No, because we give the preference shareholders new property.

Mr. RICKARDS: Suppose he does not consider that that will be the effect of the bill?

Venables: Then it comes to this, that every preference shareholder would have a right to appear.

Mr. RICKARDS: If you admit that the creation of pre-preference stock would be a good ground for hearing a preference shareholder, the case of a mortgage seems to stand on the same footing. Suppose a company proposes to embark a large amount of capital in a new undertaking, and a preference shareholder is of opinion that the whole of the money will be thrown away; and suppose, also, the bill seeks to raise a portion of the capital by mortgage; it is no answer, necessarily, to his objection to tell him that he will obtain an additional security, for it may turn out otherwise. In every case it

must be problematical whether a scheme will conduce to the general interest of the company; and if a preference shareholder, having a distinct interest from the rest of the company, chooses to think it will prejudice his interests, has he not a right to be heard?

Venables: No; he only thinks it will be a bad thing for him because it will be a bad thing for the company generally, but the governing body is the proper body to determine what is the interest of the company generally.

The CHAIRMAN: The *locus standi* of James Baird and others is *Allowed*, against Clauses 9 (raising of capital), 13 (borrowing on mortgage), 16 (issue of debenture stock), 17 (application of new capital), 18 (company may apply to purposes of bill funds not required for other purposes), 34 (power to borrow, by agreement with Alyth company); and so much of the preamble as relates thereto.

Agents for Petitioners, *Loch & MacLaurin*.

Agents for Bill, *Grahames & Wardlaw*.

GLASGOW AND KILMARNOCK JOINT LINE AND CALEDONIAN RAILWAY BILL.

18th April, 1872.—(Before Mr. WYNN, M.P., Chairman; Mr. ST. AUBYN, M.P.; and Mr. RICKARDS.)

Petition of (1) the NORTH BRITISH RAILWAY COMPANY.

Railway—Running Powers—Right of User—Competition—Substituted Line—Joint Ownership of Railway—Shareholders—Distinct Interest—Representation—Traffic Agreements—Standing Arbitrator.

A bill proposing to repeal powers of making a connecting line, which had been granted to the Union railway company in 1864 but not carried out, and to confer similar powers on two other railway companies, was opposed by the North British railway company, which owned a moiety of the undertaking of the Union company, and claimed a right of user of the whole of the line. It was alleged that the owners of the other moiety of the Union company's undertaking were favourable to the bill, the promoters of which were keen competitors of the North British company for traffic generally. The Union company, under their common seal, petitioned against the bill, and were themselves in Parliament for a diversion of the line authorised in 1864, the lands for which had been purchased, though the line was not made:

Held, that the North British company had no *locus standi*.

The bill, among other objects, proposed to repeal the powers possessed by the City of Glasgow Union railway company, under an Act of 1864, of improving the communication between their main line and the Glasgow Southside station; and to confer on the Caledonian and Glasgow and South Western railway companies power to make a substituted line with a similar object. All the land had been bought for the line authorized in 1864, but the line itself had not been made, and the City Union company were themselves also before Parliament, seeking powers of deviation. The City Union railway was an undertaking in the hands jointly of the North British and Glasgow and South Western railway companies; and the petitioners alleged that their co-proprietors had an interest in the St. Enoch Station of the City Union railway, rendering it directly to their interest to introduce upon the City Union line the traffic of other companies, and that as far as the Caledonian company were concerned, this could be done by agreement under the bill.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs, and no facilities affecting them were taken; (2) their railways were only connected with those proposed by the bill by the intervening railways of other companies; (3) their interests in the Glasgow Union railway company were not distinct from the general interests of that company, and they were accordingly represented by that company, whose *locus standi* had not been objected to; (4, 5, and 6) petitioners were not entitled to be heard against this bill, in respect of any differences between themselves and the Glasgow and South Western company, growing out of existing agreements or otherwise; (7) no sufficient case of competition was alleged; and (8) no adequate facts or reasons were shown according to practice.

Clerk, Q.C. (for petitioners: We are entitled to use all the railways of the Union company on payment of fixed rates; but the bill does not extend to the substituted line the running powers which we have at present over the authorised line. Moreover, it will bring upon the City Union railway, of which we own a moiety, the Caledonian company, who have contributed nothing to its construction, and who are competitors with us to nearly every place of importance in England or Scotland. One company with running powers cannot, it is true, be heard against the grant of similar powers to another company; but the case is different where the line, subject to their running powers, is altered or abandoned. *Great Western (Bargood Branch) Bill*, 1867 (Cliff. & Steph. 80). The principle of agreements with the City Union railway is sanctioned by this bill; all that the standing arbitrator to the joint board of directors will be able to do, in the event of their being equally divided, is to decide on what terms the Caledonian company shall be admitted. The City Union rail-

way is only a name; and our interests are obviously distinct from those of our co-partners, the South Western. This case accordingly resembles the case of the *Victoria Station Stockholders*. (Cliff. & Steph. 169.) Once upon the City Union railway, the Caledonian company will be able to use our Stobcross branch for purposes very different from those contemplated when the running powers over it were conceded.

Mr. RICKARDS: When the two interests at the City Union board are equally divided on any question, is the arbitrator in the position of a chairman with a casting vote?

Clerk: Virtually, he is. But he was appointed to decide questions of construction and management; and it never was intended that he should determine where one section of the board promotes, and the other opposes, a particular bill. Yet the promoters have omitted the Railways Clauses Act, 1863, under which the assent of three-fifths of the shareholders would be required to any agreement.

Cripps, Q.C. (for promoters): The line of the petitioners is to the north of the Clyde; the *locus in quo* is to the south of the Clyde, where the line proposed joins the City Union railway. It is through this company, therefore, that the petitioners are seeking to be heard. But if the City Union company is distinct from the North British, the petitioners have no voice in the matter; if, on the contrary, the North British are a part of the City Union railway, then they are bound by its common seal. A different interest, under the S. O., must be an interest in the company itself, not an interest arising by reason of shareholders carrying on business 100 miles away, in another direction.

Mr. RICKARDS: Shareholders are allowed to appear against the seal of the company if they can say that the bill will affect them diversely from the way in which it will affect other shareholders?

Cripps: Diversely, in reference to the interests of the particular company of which they form a part, but not by reason of some extrinsic interest. The decision as to the *Victoria Station Stockholders* must be understood in this sense. As shareholders in the City Union, the North British will be benefited by traffic of the Caledonian brought on to the City Union Railway, though possibly in respect of other lines, they may be injuriously affected. What the petitioners are seeking is to withdraw questions from before the arbitrator, and to make the legislature a Court of Appeal. Petitioners in similar circumstances to the North British have been refused a *locus standi*. (*London, Chatham and Dover (No. 1) Bill*, 1865. Stone & Graham, 86: Smeth. 185: 12 L. T. Rep., N. S., p. 155). The North British have not absolute running powers over, but only a right of using the City Union railway at fixed rates. And absolute running powers will not be given to the Caledonian; they will merely be enabled to agree with the City Union company.

The Court (after deliberation): The *locus standi* of the petitioners is *Disallowed*.

Agents for petitioners, *Sherwood & Co.*

. The discussion and decision on this bill

were, by consent, taken as governing the case of the Caledonian Railway (*Glasgow Southside Junction*) Railway Bill, where the points raised in the petition and notices of objection were identical.

Petition of (2) the ROYAL INCORPORATION OF HUTCHESON'S HOSPITAL; (3) GOVAN STATUTE LABOUR TRUSTEES; (4) MAGISTRATES AND POLICE COMMISSIONERS OF CROSSHILL.

Railway—Stopping up Road—Consequent Inconvenience to Traffic—Frontage Rights—Solum of Streets—Road Authorities—Municipal Boundary—Turnpike Roads—and Road Toll-free—Signature of Petition—By Chairman and Clerk—Practice—S. O. 134 (Municipal Authorities and Inhabitants)—Discretionary Power of Referees under—Court will take some Cognizance of Quantum of Injury—Different sets of Petitioners—Complaining of same Injury.

A railway bill proposed to stop up an ancient road, toll-free, leading into the city of Glasgow. Three petitions were lodged, one from owners of property complaining of loss of frontage and consequent deterioration of value, and two from local road authorities objecting to the stoppage as necessitating an inconvenient *détour* by other roads liable to toll. These petitioners, however, were all outside the city of Glasgow, whilst the point of stoppage lay within; and the *locus standi* of the body in whom the streets of Glasgow were vested had not been objected to:

Held, that none of the three sets of petitioners were entitled to a hearing.

(*Per Cur.*) "In exercising the discretion given them [of admitting municipal authorities or inhabitants], the Court must take some cognizance of the amount of probable inconvenience which the petitioners will suffer under the bill. Otherwise, this might be infinitesimal."

For the purposes of one of the railways authorised by the bill, power was taken to stop up Langside Road, a public street commencing in the city of Glasgow, but extending a considerable distance beyond the municipal boundary.

The trustees of Hutcheson's hospital, a large educational and charitable institution, complained that some of their property faced Langside Road, which was one of the oldest thoroughfares in Lanark or Renfrew, connecting the village of

Langside with Glasgow, and that by the proposed stopping up, one of the approaches to Glasgow would be lost, and the value of their property deteriorated. They also complained of the mode in which other streets, which were not stopped up, would be crossed by the proposed railways, and denied that they had parted with their property in the *solum*, though the streets themselves had been dedicated to public use.

The Govan statute labour trustees also opposed the stopping-up of the Langside Road, as the road authority of a portion of that road extending beyond the limits of the borough of Glasgow.

The magistrates and police commissioners of Crosshill petitioned in almost identical terms. Their burgh was constituted under the General Police and Improvement (Scotland) Act, 1862, and the Langside Road ran directly through Crosshill.

The *locus standi* of Hutcheson's hospital was objected to, because (1) no lands, &c., of the petitioners are taken; (2) the streets which will be interfered with are admittedly not the only accesses to the property of the petitioners, but are public streets vested in the board of police of Glasgow, who alone are entitled to be heard, and whose *locus* has not been objected to; (3) it is contrary to the practice of the Court to allow more than one set of petitioners to be heard in respect of interference with the same property of a public nature; (4) that the *solum* of certain streets is still vested in the petitioners, is not admitted, but even if it were, that would not entitle them to be heard after dedication of the streets to the public; (5) no facts or reasons sufficient, according to practice, are stated.

The *locus standi* of the Govan statute labour trustees was objected to on similar grounds, with the addition of the following special objection, (1) "the petition is signed only by two gentlemen, designating themselves respectively 'Chairman' and 'Clerk,' and not by a quorum of the said trustees, nor does it appear to be signed by order of any meeting of the trustees."

The objections to the *locus standi* of the magistrates, &c., of Crosshill, were generally to the same effect as in the two previous cases.

Simson, Parliamentary Agent (for Hutcheson's Hospital): No other road is substituted for Langside Road. The promoters accordingly, under cover of making a railway, are seeking to obtain, without consideration or equivalent, valuable land in Glasgow. Not only will our frontage be taken away, but as Langside Road is not a turnpike road we shall be unable any longer to get into Glasgow toll-free, and must make a *détour* by some other road, having a toll bar upon it. It is the end nearest Glasgow which is to be stopped, but we shall lose the benefit of the whole length of the road, nearly half a mile. A *cul-de-sac* will be formed, where there is now continuous communication. The nearest case I can cite as to interference with streets is *The London Street Tramways' Bill*, 1870 (2 Cliff. & Steph. 85.) No necessity exists for stopping up the road at all; it is done merely to save the railway company expense in enlarging their station.

MacLaurin, Parliamentary Agent (for Govan statute labour trustees): The road has long

formed the only untaxed entry to Glasgow from a network of statute labour roads. To shut it up will not only affect the ingress and egress of inhabitants, but will injuriously affect properties, several miles to the southward, which have been laid out for building purposes. The stations of the railway company are separated by this road, and they want to get rid of the inconvenience. The jurisdiction of these petitioners ends, no doubt, at the municipal boundary, but it is as important to them that the entrance into Glasgow beyond that point should be continued, as it is that the road should be free within their own limits. As representing the public, they are entitled to be heard against anything which affects the road, without substituting for it another equally good. As to the first objection, persons signing are held to be what they represent themselves till the contrary is shown. (*Glasgow Municipal Extension Bill, Ante, 224.*) By the Lanark Statute Labour Act, 1807, section 8, one trustee is a quorum; and "John Wilkie" signs as chairman. It is true that the road is to be stopped just 200 yards beyond the point where our jurisdiction ceases, but access by it to Glasgow will be as much cut off from us as if the point of stoppage were physically within our limits. There is no rule of the Court about the non-admission of more than one set of petitioners upon the same matter; and promoters cannot be allowed to choose between a number of petitioners, objecting to those who may be the substantial opponents and admitting others with whom perhaps they can settle more easily. This case resembles the *Clyde Navigation Bill, 1868; Petition of Landholders at Stobeross.* (Cliff. & Steph. 39.) I appear also for magistrates, &c., of Crosshill. A quorum of that body signed the petition, and claim to be heard as the municipal authority.

Mr. RICKARDS: The petitioners say that the stopping up of this road will render a *détour* necessary. Can you show to what extent the stopping up of this road will lengthen the distance between Crosshill and the main part of Glasgow?

Cripps, Q.C. (for promoters): An infinitesimal distance. There is another road.

Maclaurin: But that has a toll upon it, which the Langside has not.

Grahame, Parliamentary Agent: An Act has been passed to abolish the toll.

Maclaurin: Our allegation that a *détour* will be caused has not been traversed. Whether we are put to much or little inconvenience is a question for the Committee.

Mr. RICKARDS: The S. O. says it is "competent" for the Referees to admit a municipal authority. In exercising that discretion they must take some cognizance of the amount of probable inconvenience, which otherwise might be infinitesimal.

Maclaurin: This road should be regarded as a street, and considerable inconvenience must arise from sending people round.

Cripps, Q.C. (in reply): The petition of "the statute labour trustees of the parish of Govan" is not properly signed, and contains no statement of their position or powers; the signatures "John Wilkie, Chairman, D. Dreghorne, Clerk," are simply appended. In the *Glasgow Municipal Extensions*

Bill the petition purported on the face of it to be signed in the name and on behalf of the local authority—(*Ante, 224.*) Here there is nothing to show that the chairman or clerk had any authority or right to sign, either for themselves or on behalf of others. The proper parties to be heard are the Board of police who petition, and in whose petition the same allegations are to be found as in the others. Before they reach the point where the road is to be stopped, all the petitioners must first have entered the jurisdiction of the police Board, who accordingly represent them. If they are all to be heard, then anybody using any road, in connection with the Langside Road, whatever the distance from Glasgow, would be entitled to put forward his particular grievance.

Mr. RICKARDS: Supposing it were proposed to stop up Oxford Street, the local authorities having jurisdiction over the road would be entitled to be heard. But would not the managers of the Bayswater Road, which comes up to the Marble Arch, also be entitled to be heard?

Cripps: If so, the Uxbridge Road trustees would have the same right, and all the other trusts the whole way to Oxford. The shut-up portion does not impinge upon any district other than that of the municipal authority. The greater the distance from Glasgow the greater the number of other roads available; and from Crosshill, which is not even in the same county as Glasgow, there is a parallel road, the toll on which will be removed under the Lanarkshire Roads Act, 1856. Last year the Referees refused a *locus standi* to a landowner complaining that what was proposed to be done with a road by a railway company would interfere with his frontage. (*Midland Railway Bill, 1871. Ante 108.*)

The CHAIRMAN (after deliberation): The *locus standi* of all the petitioners is *Disallowed*.

Agents for Hutcheson's Hospital, Simson & Wakeford.

Agents for Magistrates, &c., of Crosshill, and Govan Trustees, Loch & Maclaurin.

Agents for Bill, Grahames & Wardlaw.

THAMES EMBANKMENT (NORTH) BILL.

22nd April, 1872.—(*Before Mr. ADAIR, M.P., Chairman; Mr. WYNN, M.P.; and Mr. RICKARDS.*)

Petition of the CORPORATION OF LONDON.

Embankment—Metropolitan Board of Works—Corporation of London—Representation—Commissioners of Sewers—Delegated Authority—Separate Petitions by Corporation and Body nominated by Corporation—Roadway—Change of Jurisdiction Over.

The Thames Embankment Act of 1862, which authorised the Metropolitan board of works to construct an embankment on the north side of the Thames, left with the several local authorities, through whose districts the embankment passed, entire control over the roadway, and at the same time the liability of repairing and maintaining the roadway. The Metropolitan board now promoted a bill transferring to themselves both the control and the liability. A portion of the embankment being situated within the city, the bill was opposed by the corporation of London, as the local authority having the management of the city, and by the Commissioners of sewers, as the local authority having the management and control of streets within the city, both the petitioners complaining that their jurisdiction would be ousted. No objection was raised to the *locus standi* of the Commissioners of sewers, but as to the corporation, it was urged that (1) being represented on the Metropolitan board they could not be heard against the common seal; (2) they could not be heard in addition to the body to whom they delegate their authority over the streets; and (3) this being a question of street jurisdiction, the Commissioners of sewers were the proper parties to petition.

Held, that the Corporation had no *locus standi*.

Clause 3 of the bill provided that the roadway on the Victoria Embankment should (notwithstanding anything in the Embankment Act of 1862) be under the management and authority of the Board, and that such roadway should be vested in and belong absolutely to the Board.

The petitioners alleged that portions of the Embankment roadway, &c., were situate in the city, and under the Act of 1862 were subject to their jurisdiction; and as the local authority having the management of the city, they complained that they would be injuriously affected by the withdrawal of this portion of city territory from their control.

The *locus standi* of the petitioners was objected to, because (1) the Metropolitan board of works and not the petitioners are the authority having the local management of the metropolis; (2) the petitioners are represented by the Metropolitan board, to which they elect members, and they are not entitled to be heard against the common seal; (3) the portions of the Embankment roadway, New Street and approaches referred to in the petition as situate in the city of London are not in all respects subject to the jurisdiction of the petitioners, but are under the jurisdiction of the commissioners of sewers who

have petitioned against the bill; (4) the petitioners cannot be heard consistently with practice.

Corrie (for petitioners): It has no doubt been decided that the corporation cannot appear against the Metropolitan board, upon bills referring to works outside the city. But when they propose to take part of the city itself away from our jurisdiction, and to vest it in themselves, we must surely be heard; otherwise, they may come with a bill to take away the whole of our jurisdiction, and the corporation will have no opportunity of opposing such a bill. The Metropolitan board have never been allowed to do anything in the city except with our consent. As to the Commissioners of sewers, they are merely a committee appointed to do the work of the corporation. The City Sewers Act, 1848, vests in the corporation the sewerage and drainage, the paving, cleansing and lighting within the city, to be executed by such persons as the corporation shall nominate (section 5). The Commissioners of sewers are the persons so nominated, and they merely carry out the works which the corporation have directed. They rarely oppose the preamble of a bill; they generally appear in order that proper clauses may be inserted relating to the streets. Thus the Tramways Provisional Orders Act of last year provides that within the city the tramways shall be constructed by the Commissioners, but none are to be constructed without the previous consent in writing of the corporation.

The CHAIRMAN: You contend that the Commissioners of sewers are for some purposes an independent body, but, generally speaking, act under the authority of the corporation?

Corrie: Yes; the corporation appoint them, and may remove them.

The CHAIRMAN: And you say the practice is that the Commissioners appear against bills on points of detail, whereas the corporation appear on points of policy?

Corrie: Yes; and the Act of last session shows the distinction between the two bodies.

Rodwell, Q.C. (for promoters): That was not a bill promoted by the Metropolitan board. The principle in issue here has been decided over and over again. (*Thames Embankment (Chelsea) Bill*; *Cliff. & Steph.* 155.) The city of London is a component part of the Metropolitan board, like any vestry, and the principle always acted on is that the component parts of a representative body cannot be heard against the common seal. The Commissioners of sewers have petitioned against the bill, and we have not objected to their *locus standi*. They are appointed by the corporation to take charge of the streets; they say in their petition that they are the local authority, having the management and control of streets in the city, and that is the very question which arises under the bill. The corporation are not entitled to appear as well as the body to whom they delegate their authority. In that particular character the Commissioners are not a component part of the Metropolitan Board.

Mr. RICKARDS: The case you have cited was one in which the corporation petitioned against a bill promoted by the Metropolitan board, but

there are other cases in which vestries represented on the Metropolitan board have been excluded from opposing the representative body?

Rodwell: Yes; the *Whitechapel and Holborn Improvement Bill*, 1865 (Smeth. 187), was a case of that sort.

Mr. RICKARDS: The first recorded case is one cited in *May* (*Parliamentary Practice*, 6th edition, 698), and there it was held, before the Court of Referees was created, that a vestry represented on the Metropolitan board could not petition against the common seal. (*Finsbury Park Bill*, 1857; *Petition of St. George's Vestry, Hanover Square*.) Is there any difference between the case of a vestry and that of the Corporation of London as regards their representation on the Metropolitan board?

Corrie: The *Whitechapel* case is in our favour. There the works proposed were outside Bermondsey. Had they been in Bermondsey, the vestry of that parish would have been heard.

Rodwell: I do not admit that assumption.

The CHAIRMAN (after deliberation): The *locus standi* of the corporation of the City of London is Disallowed.

Locus standi Disallowed.

Agent for Corporation, *Corrie*.

Agents for bill, *Dyson & Co.*

METROPOLITAN STREET IMPROVEMENTS BILL.

25th & 26th April, 1872.—(Before *Mr. ADAIR*, M.P., Chairman; *Mr. WYNN*, M.P.; and *Mr. RICKARDS*.)

Petitions of (1) *St. PANCRA'S VESTRY*; (2) *St. GILES, CAMBERWELL, VESTRY*; (3) *St. MARY, ISLINGTON, VESTRY*; (4) *FULHAM BOARD OF WORKS*; (5) *CHURCHWARDENS, OVERSEERS, &c., OF VESTRY OF St. PAUL'S, DEPTFORD*; (6) *St. MARY, LAMBETH, VESTRY*; (7) *CHURCHWARDENS, OVERSEERS, AND VESTRY OF St. ALPHAGE, GREENWICH*; (8) *WOOLWICH LOCAL BOARD OF HEALTH AND RATEPAYERS*; (9) *GREENWICH BOARD OF WORKS AND RATEPAYERS*; (10) *CORPORATION OF LONDON*; (11) *PLUMSTEAD BOARD OF WORKS AND RATEPAYERS*; (12) *LEWISHAM DISTRICT BOARD OF WORKS AND RATEPAYERS*.

Practice—Objections—Service of Notice of—Seven "Clear Days;" Meaning of—Sunday—Rule of Court.

A rule of Court requires that notices of objections to *locus standi* should be served on the petitioners "not later than seven clear days" after the petition has been deposited at the Private Bill Office:

Held, that the "seven clear days" are irrespective of the day on which the petition has been lodged, and that on which the objections have been served; and, therefore, in a case in which the petition was deposited on Monday, February 26, and the objections were served on Tuesday, March 5, the Court decided that it was a good service, though made on the ninth day, including February 26.

Sir Mordaunt Wells (for Fulham and Lewisham district boards and ratepayers): The petitions in these cases were deposited February 26; the notices of objection were served March 5. Excluding February 26, the "seven clear days" must have expired on Monday, March 4. It may be that when a Sunday falls on the seventh day, service on Monday is in time (*King's Lynn Bill*; 2 *Cliff. & Steph.* 2), but that is not the case here, and the notices are therefore inoperative.

Mr. RICKARDS: Does not "clear days" mean exclusive of the day on which the first act is to be done, and of the day on which the second act is to be done?

Wells: The Referees have themselves defined what they mean by "clear days," for in the amended rules, drawn up in consequence of a decision as to service on Saturday, they say:—"Notices of objections in cases of *locus standi* will be deemed to have been sufficiently served upon agents if left at the agents' office before six o'clock in the evening of every day, Sundays excepted."

Mr. RICKARDS: That order was framed to meet the case of the early closing on Saturdays, and, as regards the agents, to make Saturday like any other week-day for the service of notice. [See *Sheffield Corporation Bill*, p. 216.]

Wells: Yes; on the Saturday the Referees have extended the time to six o'clock. You must construe the order strictly against the objectors; and if an act is to be done "not later than seven clear days," you cannot make eight of it.

Mr. RICKARDS: How do you interpret the word "clear?" There is a difference between "days" and "clear days," is there not?

Wells: "Clear day" means so many hours on which an act can be done; and your order limits service to a particular hour. "Not later than seven clear days" means that the act to be done cannot be done beyond seven clear twenty-four hours.

Thesiger (for the parish of *St. Mary, Islington*): In the *King's Lynn* case there was no necessity for contending that Sunday was a *dies non* if it had been decided conclusively that, whether the eighth day did or did not fall on a Sunday, the objections might be lodged on the ninth day. The notice here was lodged on the ninth day, including February 26, and the contention, therefore, must be that in all cases you can go to the ninth day. But that was clearly not the assumption in the *King's Lynn* case.

Cripps, Q.C. (for promoters): The well-known

rule of law is that "clear days" include neither of the days on which the several acts are to be done. If any other interpretation be given to the order of the Referees respecting service of objections, the question will arise not only what day but what hour of the day did you serve them? You cannot divide a day in law; but the Court may fix an hour within which service must be made; and that is what the Court has done here. The question in the *Kings Lynn* case was whether, assuming that the "clear days" have expired, and the day of service falls on a Sunday, service must be made on the Saturday or the Monday. The question here has been expressly decided. (*Chatham and Dover and South Eastern, &c., Bill.* Smeth. 97.)

The CHAIRMAN (after consultation): The Referees are of opinion that the service is a good service.

Metropolitan Board of Works—Borrowing Powers of—Metropolitan Improvements—Corporation of London—Vestries and District Boards—Ratepayers—Representation—Indirect and Immediate—Distinct Interests—Public Company—Municipal Corporation—Dissentient Shareholders, Right of, under S. O.—Shareholders and Ratepayers—Analogy between—Wharncliffe Meeting—"Practice of Parliament" as to representation.

The Metropolitan board of works promoted a bill to carry out certain improvements, and provide the necessary funds. The bill was opposed by the Corporation of London, by several of the district vestries, and other bodies represented at the Board, as well as by ratepayers, all of whom contended that they had a right to be heard against any attempt by the Board to relieve itself of the existing statutory limit upon its borrowing powers. The petitioners further contended that the doctrine of representation did not apply here, because (1) as to ratepayers the mode of election to the board was not direct; (2) the interests of the constituent members of the Board were conflicting; (3) the proposed improvements would not be made within the jurisdiction or for the benefit of the petitioners; and (4) the additional general rates to be levied for the purpose of these improvements would impair the security of money already borrowed by the local boards within their various districts, and increase the difficulty of raising further loans for local purposes upon the local rates. It was argued

that, a distinct interest being admitted between the various district boards and vestries, their case was analogous to that of dissentient shareholders, who are protected by the S. O.:

Held, that, "according to the practice of Parliament," the *locus standi* of the petitioners must be *Disallowed*.

The bill was one to extend the borrowing powers of the Metropolitan board to the amount of £2,500,000, for the purpose of carrying out further metropolitan improvements on the north side of the Thames.

The petitioners alleged that there should be a general plan of metropolitan improvement, and the mode of apportioning the cost of such improvement; that no part of the proposed works were within their respective jurisdictions; and they urged that the borrowing of additional money was uncalled for.

The *locus standi* of the vestry of the parish of St. Pancras was objected to, because (1) the Metropolitan board of works, and not the vestry, are the authority for the local management of the metropolis; (2) no part of any of the improvements, sought to be authorised by the bill, will be made within the parish of St. Pancras; (3) the vestry are represented by the Metropolitan board to which they elect members; and they have no interest distinct from other parishes and districts of the metropolis entitling them to be heard against a bill promoted by the Metropolitan board under their common seal; (4) the petitioners do not allege that they are injuriously affected under the bill; (5) they have no interest entitling them to be heard according to practice.

The *locus standi* of the vestries of St. Giles, Camberwell, St. Mary, Islington, St. Mary, Lambeth, and the Fulham board of works was objected to on the same grounds. The *locus standi* of the corporation of London was objected to for reasons 1, 3, and 5.

The *locus standi* of the vestry of the parish of St. Paul, Deptford, was objected to on some of the foregoing grounds, and also, because (1) no lands of the petitioners will be taken or used; (2) the objections to the bill could only be taken by the governing body of the petitioners' district, who are the district board of works for Greenwich. The petitioners are represented by this district board, and the latter are represented by the Metropolitan board, of which board the district board elect a member; (4) such district board, much less the petitioners, are not entitled to be heard.

An additional objection urged to the *locus standi* of churchwardens, overseers, and members of the vestry of the parish of St. Alphage, Greenwich, was that "the petition is signed by certain persons therein described as vestrymen, but the petition did not emanate from nor was it signed at any meeting of inhabitants in vestry assembled; and if it had been, for reasons already stated, the petitioners have no right to be heard."

The *locus standi* of the Woolwich and Greenwich boards of health, and ratepayers, and of the Plumstead and Lewisham district board of works and ratepayers was objected to in similar terms, and it was alleged that as to the signatures of ratepayers, the petition did not emanate from a meeting of ratepayers.

Sir M. Wells: A public Act, the Metropolitan Board (Loans) Act, 1869, limits the borrowing powers of the board to £10,000,000. The board are now seeking by a private bill to raise a further £2,500,000. Had they promoted a public bill, as in 1869, we should have petitioned against it, and had an opportunity of discussing both principle and clauses. But they ask for powers to vary a public statute by a private bill, and for that purpose they cease to be our representatives.

Mr. RICKARDS: I do not understand that your clients have any special interest distinct from that of other parishes within the area of taxation. You make the same complaint which all the other constituents returning members to the board may equally make.

Wells: Yes.

Mr. RICKARDS: And your argument is that because by this bill the board propose to borrow more than the sum they are empowered to raise by their public Act, they are stepping beyond their representative province, and therefore their constituents are entitled to be heard. But, to take the analogy of a railway company, if the London and North Western company promoted a bill for doubling their capital, only those shareholders could be heard against it who showed that they had interests distinct from the general body. Wherein does your case differ from that?

Wells: You cannot fairly apply to the case of the Metropolitan board, and the local governing bodies of London, a S. O. which Parliament has thought fit to apply to the shareholders of a private trading company; you cannot create a S. O. by analogy, and so deal with relations of a totally different character. A railway company would have raised its original capital by a private bill, and the subsequent proposal to increase that capital would be by a private bill also, whereas here the Metropolitan board seeks to extend the provisions of a public Act by a private bill. Besides, in the case of a company, the bill must be laid before the shareholders at a Wharnclyffe meeting, and dissentient shareholders may oppose it in Parliament, or a majority may throw it out altogether. In this case, if we are shut out, the bill virtually becomes an unopposed bill. The vestries and local boards are the only parties who can raise before Parliament the question whether this additional capital is wanted. It is material to remember that the district boards have to construct certain works within their jurisdiction, and the Metropolitan board does not exclusively represent the various districts in the construction of works and the raising of money. The Metropolitan Local Management Act, 1855, empowers the district boards and vestries to borrow money for the purposes of the Act, and to mortgage the rates with this object; and under this Act my clients have contracted loans on the security of

the rates to the amount of more than £80,000. It is true that no money can be borrowed by a district board or vestry without the previous sanction of the Metropolitan board; but this provision shows that the local bodies possess large powers altogether distinct from those of what is called the representative body. Thus, while important works are to be done within the jurisdiction of the district board, the Metropolitan board proposes to raise additional sums, the charge for a portion of which must fall upon our area of taxation.

The CHAIRMAN: The expenditure of this £2,500,000 being allocated to some distant locality in which you have no interest?

Wells: Yes.

Mr. RICKARDS: You do not object to the expenditure of your own money upon your own improvements: but you object to being taxed for the benefit of the metropolis at large?

Wells: Yes; in the case of the *South London Gas Bill* this session (*Ante*, 220), vestries and ratepayers were heard, though the Metropolitan board were also heard. Thus the Metropolitan board do not, in the opinion of the Court, always represent the same interests as the vestries. Again, the representation here is peculiar. The ratepayers elect the vestry, the vestry elects the district board, and the district board sends representatives to the Metropolitan board. Thus the ratepayers are not immediately represented.

Cripps, Q.C. (for promoters): In some cases the election from the vestry is direct to the Metropolitan board; in other cases, where the population is small, two districts are put together and elect a district board, and this board sends representatives to the Metropolitan board.

Wells: If you shut out the ratepayers and district boards from raising a question of this kind, £10,000,000 may be spent on the northern side of the Thames without the slightest benefit to the southern districts, and a bare majority in the board may shut out the whole south of London from opposing such a scheme in Parliament. It is easy to imagine that a minority of members in the Metropolitan board may represent a majority of the ratepayers of the whole metropolis. Suppose the population of the southern districts exceeded the population on the northern side of the Thames, and yet the northern members on the board constituted a majority of the whole body. That would not be such a representation as ought to bind us.

Thesiger (for the vestries of St. Mary, Lambeth, and St. Mary, Islington): If the petitioners are excluded, the Metropolitan board will be able to borrow as much money as they like, and to spend it as they like, and dissenting ratepayers and local bodies will have no redress whatever. 1.—Does the Metropolitan board really represent the vestries and ratepayers? In a public company the directors are appointed immediately by the shareholders, so that every director represents every shareholder. Here only a small minority of the Metropolitan board represents any particular vestry or district board. Considering the conflicting interests that exist in different parts of the metropolis, this is an important distinction. The directors of a company represent the general interests of share-

holders, and practically there are no conflicting interests. But in the Metropolitan board it would be quite possible for a majority of the members to say to one another, "You support my improvement and I will support yours," the consequence of which would be that no improvement would be made except in those parts of the metropolis represented by the majority. Such a result may be improbable, but it suggests a distinction between the case of shareholders and the constituents of the Metropolitan board. 2.—

Assuming that, for purposes within the scope of their powers, the Metropolitan board really elect the vestries, the bill now promoted is not within the scope of their powers, so that quod the bill they do not represent us. There is clearly a point beyond which a representative body of this kind cannot go without being liable to opposition from their constituents. Suppose, for example, the Metropolitan board promoted a bill providing that the members of the board should remain in office for ten years, surely the vestries and district boards would be heard against such a bill. In the case of a company incorporated for certain purposes, even one dissentient shareholder, by applying to the Court of Chancery, could restrain the company from going beyond their articles of association. The Metropolitan board propose, by the present bill, to do something which they were not authorised to do under the public Act. Have not the vestries a right to say, "We did not elect representatives to the board on the understanding that they were to do what they now propose to do?" The members of the board were elected upon the faith of existing public legislation, which empowered the board to borrow only to the extent of £10,000,000. They now propose to borrow a further sum of £2,500,000. It follows that they are travelling beyond the scope of their powers, and thereby have taken themselves out of the category of a representative body.

Mr. RICKARDS: We all know that the Metropolitan board have almost every year promoted private bills giving them powers beyond those conferred by their public Acts. Do you contend that the limitation of their power to borrow money is the only law which they are not justified in seeking to amend?

Thesiger: Not without opposition. The other bills brought forward by the board were for objects contemplated by the original Act.

Mr. RICKARDS: They have taken power to construct works in various parts of the metropolis, and those works necessarily required capital. Do you contend that they go beyond their province if they promote private bills of this nature?

Thesiger: I am not aware of any private bill of theirs seeking to upset the legislation of 1869, except the *High Street, Shoreditch, Bill*, which was thrown out last year. No doubt the Metropolitan board, like everybody else, have a right to bring forward private bills for any purpose whatever; but if they attempt to go beyond their borrowing powers, their constituents have a right of opposition.

Mr. RICKARDS: As to the argument that the board are trying to upset the provisions of a public Act, all private bills by their very nature encroach either upon the statute law, or upon

the common law. The object of giving exceptional rights to individuals or bodies, is to enable them to go beyond the law, as for example by taking a man's land compulsorily.

The CHAIRMAN: At the same time it is to be remembered that you give persons who say they are thus aggrieved every opportunity of being heard against a bill of that nature, and you make S. O. which are always construed largely for the protection of private interests.

Thesiger: Yes; it is not necessary for my argument to contend that the Metropolitan board are doing anything improper in applying for further powers. All I say is that, as they seek for such powers, over-riding public legislation, those whom they represent ought at least to be heard.

Mr. RICKARDS: Then it comes to this: That in the case of every private bill solicited by the Metropolitan board—such bill necessarily going beyond the existing law, or otherwise, it would not be required—all these petitioners would have a *locus standi*?

Thesiger: Except in a case evidently contemplated by their existing Acts, where the bill promoted affects only the interests of owners of property. After the decision on the *Thames Embankment (Chelsea) Bill* (Cliff. & Steph. 135), I cannot contend that in such a case the vestries would have a *locus standi*.

Pembroke Stephens (for Woolwich local board and ratepayers): The assumption lying at the root of representation is, that all the constituents of the representative body are equally and impartially benefited. From the expenditure proposed by this bill, however, we shall derive no benefit whatever. If the analogy of a public company is to be followed, our right to a *locus standi* is clear. A public company must submit its bill to a Wharfedale meeting, and if any one shareholder dissents, he has, under the S. O., a right to oppose the bill in Parliament. In like manner, when this bill was discussed at the Metropolitan board, the representative of the Woolwich board objected to it. On what ground, and by what analogy, can you refuse to the Woolwich board a *locus standi* against the bill so objected to by its representative? Again, suppose at an east-end district great distress existed through some local cause, such as the closing of the dockyard at Woolwich, and the Metropolitan board promoted a bill to tax it at such a time for a west-end improvement; or suppose a majority of the board, representing the north side of the river, promoted a bill pledging them for ten years to carry out none but northern improvements; could it be said that under such circumstances the east-end district, or the southern districts, would be excluded from opposition in Parliament on the ground of representation? The Metropolitan board have a right to promote bills, but not to promote them without any control on the part of constituent bodies whose interests are so conflicting. Our case differs from that of other petitioners, for we are not a vestry or a district board, but a local board of health under the Public Health Acts. We have statutory powers to apply to Parliament to execute works, and defray the expenses of such application out of the rates. Yet it is contended

that we have no power to petition Parliament against such a bill as this. We say in our petition that before the powers sought in this bill are granted, it is expedient that "a general plan for the improvement of the main communications of the metropolis, and the mode in which the cost of such improvements should be apportioned between the whole metropolis, and the district or districts more immediately and locally benefited, should be prepared by the board."

The CHAIRMAN: That is in effect the recommendation of the hybrid committee in the *Shoreditch* case?

Stephens: Not merely the effect, but the very words of their recommendation.

Corrie (for the corporation of London): Those whom we represent pay one-eighth of all the rates levied by the Metropolitan board. We object that the improvements proposed are not general but local, and are themselves unnecessary. But whether they are necessary or not, we should, at all events, be heard before the Committee on a question of this importance.

Barrow (for district boards of Plumstead and Greenwich, and ratepayers): Under the system of election to the Metropolitan board, one-third of whose members go out of office every year, a man may be elected by the district board to the Metropolitan board, in the last year or on the very last day of his office in the district board, and it very often happens that members of the Metropolitan board have actually ceased to belong to the vestries and district boards, where they have been replaced by other members. Can we, the local bodies and the ratepayers, from whom the money is to be raised, be held to be represented by a board so constituted? Plumstead has not even the privilege of electing one member to the Metropolitan board, for it elects a member jointly with Lewisham. If the interests of Plumstead and Lewisham clash, the question arises—whose member is he? Neither district can be said to be really represented at the board. At all events, it is not the sort of representation contemplated by the S. O. applicable to companies, where the common seal directly represents the shareholders, and stands for a common interest. If there be an analogy between a directorate and the Metropolitan board, for the purposes of the S. O., we must clearly come within the exception there provided for, because none of the works proposed are to be executed within our area of taxation; and we, therefore, have distinct interests. Again, the district boards have power to borrow money for local purposes on the security of the local rates. The money borrowed by the Metropolitan board is also secured upon the whole of the local rates. If the board are empowered to raise this additional £2,500,000, they will diminish *pro tanto* the value of the security upon which the district boards are themselves authorised to borrow, and, in fact, the Plumstead board, who wish to raise money for local works at the present moment, find that the further borrowing powers which this bill will give to the Metropolitan board has diminished their facilities in the money market. A case quoted in *May's Parliamentary Practice*, 6th edition, p. 698 (*Finsbury Park Bill*; *Petition of Vestry of St.*

George's, Hanover Square) may appear against me, but that bill was promoted in 1857, before the borrowing powers of the Metropolitan board were limited, so that any one then lending money to the vestry would do so with his eyes open. The decision in the *Birmingham Proof-House* case (Cliff. & Steph. 125) is in our favour. The Greenwich petition raises a point not contained in the other petitions, that improvements are urgently required in the Greenwich district, and are much more pressing than those contemplated by the bill.

[Other petitioners relied on the arguments already urged.]

Cripps, Q.C. (in reply): The fact that this is a case of unusual importance, and that the petitioners may suffer a grievance if they are not allowed a *locus standi*, affords no good ground for inducing the Court to depart from its established rules. This is not the tribunal to which the petitioners must appeal for a remedy of their grievance. According to the practice of the Referees, two propositions are incontrovertible; (1) a constituent body is bound by the Acts of its representatives; (2) those representatives are bound by the common seal. The constituents of a corporation are considered one person in law, and as such they have one will, which is collected from the sense of the majority. The individuality of each representative is lost; it is only the affixing of the common seal which unites the several assents of the members of the corporation, making one joint assent of the whole; and the act of the majority is esteemed the act of the whole. When the common seal is affixed there is no longer any majority or minority; the act done is as much the act of the minority as of the majority. Thus what the Metropolitan board have done under their common seal is not the act of the Plumstead district board or of the Paddington vestry, it is the act of all the vestries and district boards united—the act of the Metropolitan board; and the minority; are just as much bound by the common seal as the majority. Whether Parliament did wisely in thus constituting the Metropolitan board is not the question. It is not necessary for me to contend that the system of representation here is perfect, but the system exists under statute, and that being so, all the Court has to do is to apply its ordinary rules. In promoting this bill, the board do not go beyond their Parliamentary powers. Their act of incorporation (1855) authorises them, "where it appears to them that further powers are required" for the purpose of any metropolitan improvement, to "make application to Parliament for that purpose." (Section 144.)

Mr. RICKARDS: I presume this power of applying to Parliament is limited strictly to bills for works which would be for the improvement of the metropolis; and if the bill went beyond those purposes, you would probably admit that the petitioners here might have a *locus standi*—e.g., if the Metropolitan board asked for authority to raise a large sum of money for the restoration of St. Paul's cathedral?

Cripps: I apprehend that would be one of the objects contemplated by the Act, and the peti-

tioners would have no right to oppose such a bill; though Parliament might say "we think you have not exercised a sound discretion in applying for the bill."

Mr. RICKARDS: Suppose the Act of 1855 had limited the borrowing powers of the Board to £10,000,000, and in spite of that limitation the board had afterwards applied, under Clause 144, for statutory powers to execute works exceeding the limit of £10,000,000?

Cripps: That would have been the exercise of a power contemplated by the Act. The case is analogous to that of an existing railway company coming for power to undertake further works, and to raise further capital for that object.

Mr. RICKARDS: In that case the railway company would have obtained its original powers by a private Act. But in the case I have put, would the doctrine of representation apply, and prevent the constituent bodies from being heard against the bill?

Cripps: If any corporation goes beyond the powers it derives from its charter or Act of incorporation, an information lies against it in a court of law.

Mr. RICKARDS: Very likely that may be a concurrent remedy; but supposing it were not resorted to, and the corporation persisted in promoting the bill, would not the constituent bodies have a *locus standi*?

Cripps: Not under any circumstances. Parliament has committed to the discretion of the Metropolitan board certain duties, and the constituent bodies cannot be heard against the bill which is promoted by the board in the discharge of these duties.

Mr. RICKARDS: But the further powers for which you apply must be *ejusdem generis* with those with which the board are invested by their construction.

Cripps: Certainly; and what can be more precisely *ejusdem generis* than the powers sought by this bill.

The CHAIRMAN: Suppose you promoted a bill for gilding the whole of the interior of St. Paul's, would you consider that an improvement covered by your Act?

Cripps: If we can suppose the Metropolitan board so foolish as to apply for such a bill, I think they would have the power to do so.

The CHAIRMAN: And those whose money was to be so spent would not have the right to protest against it?

Cripps: No; because, absurd as the act might be, it would be the act of those whom the constituent bodies had elected: and it is then for Parliament, not the constituents, to say whether even an absurd application is to be granted.

Mr. RICKARDS: But if nobody has a *locus standi* against it, the bill passes as an unopposed bill?

Cripps: No doubt there would be other opponents, as there are against this bill; but, if not, Parliament has provided a machinery for dealing with and testing unopposed bills. As to the S. O. respecting shareholders in public companies, it is true Parliament has said, such shareholders shall not be bound by the common seal, where their interests are distinct, and where

they have dissented at a Wharnccliffe meeting. But that exception proves the rule, and no such exception is made by Parliament in the case of constituents of public bodies. It has been suggested that a majority of the board might bind themselves to carry out improvements in certain districts of the metropolis, and ignore the wants of other districts. The answer is that this would be a corrupt compact, which might be reached by a criminal information.

Mr. RICKARDS: You might punish such a combination by ordinary process of law; but if the majority who combined introduced a bill into Parliament, and the constituents of the board were not allowed to oppose it, the bill might pass as an unopposed bill, and it would then be too late to undo what had been done.

Cripps: An Act of Parliament obtained by an illegal combination of that kind could not stand.

The CHAIRMAN: That may be; but, meanwhile, the board might have levied excessive or inequitable rates, and it would be a small consolation to aggrieved ratepayers to tell them that the Act was going to be repealed, and that those who combined to pass it would be punished.

Cripps: The directors of a railway company may combine fraudulently to promote a bill, but unless their shareholders have dissented at a Wharnccliffe meeting, or unless their interests are distinct, they cannot be heard against the bill.

Mr. RICKARDS: We are reminded here that the petitioners have no Wharnccliffe meeting, or any other opportunity of expressing dissent, so as to secure a *locus standi*.

Cripps: No, and as Parliament has not thought fit to provide for anything analogous to a Wharnccliffe meeting in the case of bills promoted by a corporation, the petitioners here must be dealt with upon that footing. As to the limitation of borrowing powers in the Act of 1869, there is nothing in that Act which restricts the power of the Metropolitan board, under their constitution, to apply to Parliament for further borrowing powers for the execution of further improvements. We were limited only as a railway company is limited by its Act, and if we want more money we must obtain further statutory powers to raise it. As a matter of fact, we have already done so since 1869, having last year obtained power from Parliament to raise £75,000 for the purchase of Hampstead Heath. If the petitioners are entitled to appear against this bill, they will be equally entitled to appear upon every occasion when the Metropolitan board comes before Parliament. Now, in constituting the board, Parliament were of opinion that the general interests of the metropolis would be best consulted by committing its local management to a central body, who were empowered to settle the order in which particular improvements should be carried out. No improvement whatever can be proposed which is not more for the benefit of a particular locality than for other parts of the metropolis; and if, in every case, each district or parish not interested in the particular improvement is allowed to oppose the improvement in Parliament, there will be no end to such opposition. Further, this bill proposes improvements in different parts of the metropolis, and

if the principle contended for is to prevail, it will be competent for any or every parish to petition against any particular part of the bill. That principle, if adopted here, cannot be limited to the case of the Metropolitan board; it will apply to every corporation throughout the kingdom, and in every such case ratepayers must be admitted in opposition to the body by whom they are represented. Nor could you stop at municipal corporations, for the same rule applies to every company and its shareholders. The Court would be going in the face of its own decisions, and of the decisions of committees before the Court was constituted, if, in consequence of this case, it assented to such a principle.

Mr. RICKARDS: It has been urged that the interests of the shareholders of a company are identical, while the interests of the vestries represented in the Metropolitan board are distinct.

Cripps: I do not think they are the same; but the S. O. in favour of shareholders introduces an exception to the general rule, and no such exception is made on behalf of bodies like the petitioners. It is hardly possible to imagine any corporation, however constituted, in which some member of it might not come forward and say that a particular act was about to be done which would not be for his benefit. As to the argument that this bill affects the borrowing powers of the district boards, Parliament has constituted the districts with the liability to be rated from time to time by the Metropolitan board, and all money is lent to the district board with that liability. The power of the local and of the central authority is not conflicting; it may as well be objected that the district cannot raise the money it wants on account of the education rate which Parliament has lately authorised. As to the alleged statutory power possessed by the Woolwich board to promote improvement bills, the Woolwich board elects a member to the Metropolitan board, and that concludes the whole matter.

By the COURT (after deliberation): Accord. ing to the practice of Parliament, the *locus standi* of all the petitioners is *Disallowed*.

Agent for St. Pancras Vestry, *Cooper*.

Agent for Vestry of St. Giles, Camberwell; for Lewisham District Board of Works and Ratepayers; and for Fulham Board of Works, *Bradfield*.

Agent for Vestry of St. Mary, Islington, *John Langton*.

Agents for Vestry of St. Paul's, Deptford, *Ludlow & Gorst*.

Agents for Vestry of St. Mary, Lambeth, *Simson & Wakeford*.

Agents for Vestry of St. Alphage, Greenwich, *Wyatt & Co*.

Agents for Woolwich, Greenwich, and Plumstead Boards of Works and Ratepayers, *Martin & Leslie*.

Agent for Corporation of London, *Corrie*.

Agents for Bill, Dyson & Co.

GREAT NORTHERN RAILWAY (No. 2) BILL.

29th April, 1872. — (*Before Mr. ADAIR, M.P., Chairman; Sir T. E. COLEBROOKE, M.P.; and Mr. RICKARDS.*)

Petition of MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.

Railway—Apprehended Diversion of Traffic—Agreement—Alleged breach of—Joint Committee—Alternative route—25 miles longer—Competition—Allegations, not specific.

In 1860 an agreement was made between the Sheffield and the Great Northern railway companies, by which (*inter alia*) neither company was to do any act, "directly or indirectly, to affect injuriously the traffic of the other company." The Great Northern now proposed to construct new lines of railway. The Sheffield company alleged that these would be made in breach of the agreement, diverting traffic which at present passed over the petitioners' system. The promoters contended that the agreement did not apply to the bill. Between the points stated there was a difference of 25 miles in favour of the existing route as compared with the alternative route feared by the petitioners; and if the suggested route were adopted by the promoters, it appeared that the traffic would pass over a shorter portion of their own system than was used as matters stood:

Held, that the petitioners had no *locus standi*.

The bill was one to enable the Great Northern railway company to construct railways in Nottinghamshire and Derbyshire, and for other purposes.

The petitioners alleged that if the proposed lines of railway were constructed, these would enable the Great Northern company, by means of the North Staffordshire railway, to divert traffic to Manchester and elsewhere, which now passed over the line of the petitioners, under an agreement between them and the promoters, made by virtue of the powers contained in the Great Northern, and Manchester, Sheffield, and Lincolnshire railway companies' Act, 1858.

The *locus standi* of the petitioners was objected to, because (1 and 2) the promoters knew of no such agreement as the petitioners set up; if any such agreement existed it ought to have been more accurately specified by reference

to its date, and the petitioners had no right to be heard upon the vague allegations in the petition; (3) if the promoters diverted traffic which ought under an agreement to be conveyed over the railway of the petitioners it was before legal tribunals that a remedy should be sought. An allegation that, if certain lines were made, an agreement might be violated, gave no right to be heard against the construction of those lines; (4) the promoters absolutely denied that any existing agreement would be violated by the construction of the proposed railways.

Hoskins Parliamentary Agent (for petitioners): Our railways join those of the Great Northern at Doncaster, Retford, and other places, where a large interchange of traffic takes place. The agreement referred to in our petition was made October, 1860, and it says:—"Neither company shall make any bargain, treaty, agreement, or arrangement with any other company, or do any other act directly or indirectly to affect injuriously the traffic of the other company, or to prejudice this agreement, without the consent of such other company." We say that if these lines are made, the traffic of the promoters will go on the North Staffordshire to Manchester and other places in Lancashire, whereas we now have the benefit of it.

Pember (for promoters): If the Great Northern company did divert traffic in the way suggested, the distance it must traverse to reach Manchester from Doncaster or Grantham would be increased by 25 miles. It is absurd to put such a case forward as one of competition. As to the agreement, all it does is to bind us to do certain things with regard to particular traffic. That agreement is not touched by the bill, and if it be violated, they can sue us for the breach, or can refer any question arising out of it to the joint committee appointed under the agreement. There has, however, been no such reference. The real grievance of the petitioners is that their coal traffic from South Yorkshire will be prejudiced, because the proposed lines will serve the Derby coalfields, which are nearer to London; but that is not a competition which confers a right to be heard. The alleged diversion of traffic will never occur.

The CHAIRMAN: The *locus standi* of the petitioners is disallowed.

Locus standi Disallowed.

Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Wyatt & Hoskins.*

MIDLAND RAILWAY (ADDITIONAL POWERS) BILL.

29th April, 1872.—(Before Mr. ADAMS, M.P., Chairman; Sir T. E. COLEBROOKE, M.P.; and Mr. RICKARDS.)

Petition of the NORTH STAFFORDSHIRE RAILWAY COMPANY.

Railway—Private Canal—Disused—Partially Filled Up—Competitive Route—Purchase of Site by Railway Company—Construction of Works therein—Agreement for Joint Use of by Two Companies—Equal Facilities Sought by Third Company—Relative Equality between—Inferred from former Act—Joint Ownership—New Works—Exclusive Use of—Competition by Water—Conversion into Railway—Improvement of Existing Competition—Prima facie Injury.

The Midland railway company promoted a bill empowering them to purchase a private canal now disused and partially silted up, and to erect upon the site certain works, over which the promoters and the North Western were, by agreement, to have equal rights of user. The canal formerly gave access to the town of Burton, and communicated with a water navigation still in use, and now vested in the North Staffordshire railway company. The line of the latter company entered the town of Burton, and competed for traffic with the lines of the Midland and North Western companies at that point. Under an Act of 1859, the North Staffordshire company were entitled to equal facilities with the two competing lines in respect of certain works then authorised. They now opposed the bill on two grounds—(1) that the closing of the canal, though now disused, was not in the public interest, and deprived the petitioners of the power of competing with their two rivals at Burton, it being an alternative water route; (2) inasmuch as it was to be inferred that Parliament in 1859 intended the petitioners to hold the same position at Burton as was enjoyed by the two competing companies, the petitioners, upon making an adequate payment, were now entitled to share with those companies whatever facilities were afforded by the proposed new works:

Held, (1) that the canal being a private canal, and now disused, the petitioners could not be heard to oppose its sale; and (2) that as no rights enjoyed by the petitioners under the Act of 1859 were interfered with by the bill, they had no *locus standi* against it to maintain, now or hereafter, a position of relative equality with the two competing companies.

(*Per Cur.*) "A petitioner claiming a *locus standi*, must show that, *prima facie*, the bill will be injurious to him."

The bill was one for conferring additional powers on the Midland railway company for the construction of works, the raising of further capital, and for other purposes, amongst which were the buying of certain lands at Burton-on-Trent, the acquisition of the Burton or Bond End canal, described in the bill as now disused, and power to agree with the London and North Western railway company for the joint user of any works constructed upon the lands and site of the canal.

The petitioners objected to the proposed purchase of the canal by the Midland railway company, and alleged that they competed for traffic with the Midland and North Western companies to and from Burton-upon-Trent. They denied that the canal was altogether disused, admitting, however, that it was seldom used, and contended that if the canal were converted into a railway or approaches, and petitioners were excluded therefrom, they would no longer have the same facilities for competition with the Midland and North Western lines at that point.

The *locus standi* of the petitioners was objected to, because (1) they have no such interest in the Burton or Bond End canal as entitles them to be heard; (2) the acquisition of the canal by the Midland company would not so alter or affect any of the rights or interests of the petitioners as to entitle them to be heard; (3) no case of competition is shown; (4) the petitioners cannot be heard consistently with practice.

Hollway (for petitioners): This canal may in parts be shallow and silted up, but it is an existing means of water communication and could be cleaned out and used if necessary.

The CHAIRMAN: Have you the right to use it?

Bidder (for promoters): The petitioners cannot use the canal, either physically or legally—physically, because part of it is filled up, and legally, because it is a private canal belonging to the Marquis of Anglesea, who gave public notice two years ago that nobody could use it.

Hollway: The navigation between the Trent and the Mersey is vested in us. This canal is an existing water communication connected with our system, and we might use it as a means of access by water to Burton; but if the Midland company turn it into a railway we shall be placed in a position of great disadvantage, and shall no longer enjoy at Burton the equal accommodation and facilities of competition for traffic with the Midland and North Western companies, which are at present secured to us by statute.

The CHAIRMAN: Does the bill authorize the conversion of the canal into a railway?

Hollway: No; but there is nothing to prevent the Midland company from making sidings on the site.

Mr. RICKARDS: I presume that a railway company cannot convert a public canal into a railway without express Parliamentary powers?

The CHAIRMAN: If, however, it is a private canal and there are no public rights connected with it, then the railway company purchasing it might do what they liked with it.

Hollway: If the Midland company are empowered to purchase the canal, at least we should be allowed to ask for clauses securing to us equally with the Midland and North Western companies access to, and the use of, any railway sidings, &c., which may be constructed on the site of the canal. At present we have the power of competing with them by water. They now propose to deprive us of that means of water competition.

Mr. RICKARDS: The bill assumes that the canal is private property, which the Marquis of Anglesea can sell absolutely. Can you show that this is a public navigation over which the public have rights?

Hollway: I cannot; but I can show that we have used the canal and that the public have used it for a long time past as a public navigation.

Bidder: Either this is private property or it is a public canal. If it is private property, the Marquis of Anglesea might shut it up to-morrow. If, on the contrary, the public have any rights over it, the bill contains nothing interfering with those rights. As a matter of fact, the canal is private property.

Hollway: The bill empowers the Midland company to make agreements with the North Western, giving them equal rights of user over any works constructed upon the site of the canal. We object to that exclusive agreement, unless equal facilities are conceded to us. The Legislature, in 1859, placed us at Burton upon an equality with these two companies, and the power now sought is inconsistent with existing legislation.

The CHAIRMAN: Parliament said, in 1859, that the North Staffordshire should possess, upon certain terms, a third part of the ownership of certain works; you now wish the same position to be secured to you, as regards the future destination of lands to be taken under the bill?

Hollway: Yes.

The CHAIRMAN: The Court will not trouble counsel for the Midland railway company to address them upon the subject of the canal.

Bidder (in reply): The question, then, is, whether by virtue of any *status* which the petitioners obtained under the Act of 1859, they are entitled now to ask for a share in the agreement, or power of agreement, which we take under the bill. Surely it cannot be contended that, because, in 1859, Parliament gave the petitioners the same rights as the North Western company, in respect of certain works then authorised, they are entitled to the same equality upon any future development of Midland stations and works at Burton, *ad infinitum*. In the agreement of 1859, entered into by us with the North Western company, it was expressly provided that the rights obtained by the North Western company should not extend to sidings or conveniences made in future by the Midland company. The North Staffordshire company cannot claim to stand in a better position than the North Western company under that agreement.

Mr. RICKARDS: Is it contended on the part of

the petitioners that the bill overrides their rights under the Act of 1859?

Hollway: I do not say that the bill overrides or repeals the Act of 1859, except inferentially. I say that the object of that Act was to put us in the same position as the North Western company, at Burton.

Mr. RICKARDS: "Position" is a vague term. The Act of 1859 gave certain definite rights to the North Western company, and assuming that the North Staffordshire company are entitled to the same rights, does the bill enable the North Western and the Midland companies, by agreement, to oust the petitioners from those rights?

Hollway: I cannot put my case as high as that, because I do not know what the new works are. But when we get before the Committee we shall hear from the promoters' witnesses what these works will be, the disadvantage under which they will place us, and the change to be made in that relative position of the three companies inferentially contemplated by Parliament in 1859.

Mr. RICKARDS: The promoters are not bound to give evidence with respect to any specific works. All they ask is for power to enter into an agreement as to the ownership and use of the land they desire to buy. They are not obliged to say what works they mean to construct there?

Hollway: We should question the witnesses on this point.

Mr. RICKARDS: The witnesses might say "We do not know what the works will be."

Hollway: Then we should ask the Committee to put us in a position of equality with the North Western company, with respect to any works which might be constructed.

Mr. RICKARDS: A petitioner claiming a *locus standi* must show that *prima facie* the bill will be injurious to him.

Hollway: *Prima facie*, when you have three companies competing for traffic at a certain point, and two of those companies agree for the exclusive user of certain works, the third company is likely to be injured.

Bidder: It has not been suggested that in any new works we may construct we shall interfere with any existing rights or interests of the petitioners. The only suggestion is, that by the possession of this land, we may improve our position, and somewhat facilitate our traffic; and, thereupon, the petitioners say, "because we compete with you, and because Parliament once allowed us to share some rights which you got, therefore we are for ever to be placed in the same relative position." The Court has decided repeatedly, that where there is an existing competition recognised by Parliament, the mere improvement of one of the competitive routes affords no ground for a *locus standi*. (*Cliff. & Steph., Practice* 64.)

The CHAIRMAN: The *locus standi* of the petitioners is *Disallowed*.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Sherwood & Co.

BIRMINGHAM AND HALESOWEN JUNCTION RAILWAY BILL.

2nd May, 1872.—(Before *Mr. ADAIR, M.P., Chairman*; *Sir T. E. COLEBROOKE, M.P.*; and *Mr. RICKARDS*.)

Petition of the GREAT WESTERN RAILWAY COMPANY.

Railway—Competition—New Route—Saving Two or Three miles—Junction—Taking and using, &c.—S. O. (in what cases Railway Companies heard)—Application of, to owning, not working Company—Line worked by Petitioning Company—Traffic Facilities—Limitation of, on Locus Standi.

The Great Western company opposed the construction of a new line between Halesowen and Birmingham on the ground of competition, and because it would form a junction with an authorised railway which they, under a statutory agreement, were to work jointly with another company. The promoters conceded a limited *locus standi* against such parts of the bill as required the petitioners to give traffic facilities to the new company:

Held, that, the threatened competition being direct, and the route between the two points named being a shorter one than that now existing in the hands of the petitioners, they were entitled to be heard on the ground of competition, but that the S. O. (prescribing the cases in which railway companies are to be heard against the taking or using of their lands, &c.), refers to an owning company, and does not extend to a working company.

The bill was one to incorporate a company for the making of five lines. Four of these, however, had been abandoned, and the only line now proposed was one forming a junction between the Halesowen and Bromsgrove branch, at a point near Halesowen and the Birmingham West suburban line near Harborne. The Halesowen and Bromsgrove line belonged to an independent company, but when completed was to be worked jointly by the Great Western and the Midland companies.

The petitioners opposed, on the grounds of competition, and of interference, &c., (by a junction) with a line which they worked jointly with another company.

The *locus standi* of the petitioners was objected to, because (1) the bill contains no provisions for taking, using, &c., any lands, railway stations,

&c., of theirs; (2) no sufficient case of competition is shown; (3) the petitioners have no such interest in the Halesowen and Bromsgrove railway company as entitles them to be heard; (4) the right of the petitioners to be heard ought to be limited to Clauses 47 and 48, requiring them to grant traffic facilities to the new company, and ought not to apply to the preamble and other clauses; (5) the petitioners have no interests entitling them to be heard according to practice.

Saunders (for the Great Western company): We object to the proposed line, because it will compete between Halesowen and Birmingham with our authorised line from Halesowen, by the Stourbridge extension, to Birmingham. The distance between Halesowen and Birmingham will be less by the new route.

Pope, Q.C. (for promoters): Some two or three miles.

The CHAIRMAN: Upon a short distance that saving is not unimportant.

Saunders: Yes; the competition will be direct; and though the traffic may be sufficient to pay one company, it may not be enough for two. As to the Halesowen and Bromsgrove branch, which we are to work jointly with the Midland company, the deposited plans show that the works of that branch are liable to be "taken or used" under the bill; and, that being so, the S. O. gives us a *locus standi*.

Pope (in reply): As to our contemplated junction with the Halesowen and Bromsgrove branch, the Court would not, under the modified S. O., give the Great Western company an unlimited *locus standi*, even if they were the owning company; still less are they entitled to an unlimited *locus standi* as the working company.

Mr. RICKARDS: I do not think the S. O. has ever been extended to a working company?

Pope: No; the junction with the Halesowen and Bromsgrove branch is not a junction with the Great Western line, within the meaning of the S. O. As to competition, a competing route is already in the hands of the Midland between Halesowen and Birmingham; namely, from Halesowen by the Halesowen and Bromsgrove branch, and thence to Birmingham by the Birmingham and Gloucester line. The bill, therefore, merely proposes the improvement of an existing competition. The *North London Railway Bill* (Cliff. & Steph. 111) is in point.

The CHAIRMAN: The *locus standi* of the Great Western railway company is allowed.

Locus standi Allowed.

Agents for petitioners, *Young, Maples & Co.*

Agents for Bill, *Wilkins & Co.*

GLASGOW AND SOUTH WESTERN AND GREENOCK AND AYRSHIRE RAILWAY COMPANIES' BILL.

2nd May, 1872.—(Before Mr. ADAIR, M.P., Chairman; Sir T. E. COLEBROOK, M.P.; and Mr. RICKARDS.)

Petition of the BOARD OF POLICE OF GREENOCK.

Railway—Amalgamation—Police Board—Agreement—Saving of Rights under—Railways Clauses Act, 1863—Dissolution of Company—Obligation by, to execute Works—Power of enforcing Agreement—Penalty Clause; absence of, in—Period for completing Works; expiration of, before Amalgamation—Breach of Faith, alleged—Allegation not traversed in objections—Pending Suit.

In 1868 the Greenock railway company undertook, by a statutory agreement with the police board of Greenock, to improve and extend a certain street in that town. The term limited by the Act for the completion of the work would expire in July of the present year; and the company, which, meanwhile had not begun the work, now, in conjunction with another railway company, promoted an amalgamation bill which provided for its own dissolution on July 1 or August 1 next. The police board petitioned against the bill on the ground that, as the agreement of 1868 provided no means of enforcing it, their only remedy was an appeal to Parliament when the Greenock company applied for fresh powers, whereas the proposed dissolution of the company would deprive them of this means of redress:

Held, that the petitioners had no *locus standi*, as the bill would place them in no worse position than they were in at present, and the clause in the general Act (embodied in the bill), casting on the amalgamated company the obligations of the company to be dissolved, sufficiently preserved any rights which the board possessed under the agreement.

The bill was one for the amalgamation of the Greenock and Ayrshire railway company and the Glasgow and South Western railway company, and for the dissolution of the former company.

The petitioners complained that by the proposed amalgamation and dissolution they would be deprived of the power they now possessed to compel the Greenock and Ayrshire company to fulfil certain obligations into which, as they alleged, that company had entered with them; and they submitted that the non-fulfilment of these obligations was a breach of faith on the part of the company.

The *locus standi* of the petitioners was objected to, because (1) the bill provides for the fulfilment, by the amalgamated companies, of all the obligations and liabilities of the Greenock and Ayrshire railway company, and the interests of the petitioners are thereby sufficiently protected; and (2) the petitioners make no allegation upon which they can be heard according to practice.

Sargood, Serjt. (for the petitioners): Under an agreement scheduled to an Act of 1868, the Greenock and Ayrshire railway company undertook the extension of Patrick Street, and obtained statutory powers to execute the work, upon our requisition, and to complete it before July 13, 1872. Hitherto, however, they have done nothing at all, in spite of our pressure and remonstrances. The question is whether we are sufficiently protected by the clause in the general Act, which transfers to the amalgamated company the obligations of the Greenock and Ayrshire company? Now the bill provides that the undertaking of the latter company shall vest in the amalgamated company on July 1 or August 1, at the option of one of the parties. One of two things, therefore, will happen: Either the Act will take effect a few days before July 13, when the fulfilment of the existing obligation will be a physical impossibility; or it will take effect after July 13, when the powers of the company will have lapsed, and the obligation cannot be fulfilled in law. Under these circumstances, the incorporation of the saving clause in the general Act will not give us sufficient protection. Unhappily, the statutory agreement provides no mode of enforcing it by penalty or otherwise. Our only remedy, therefore, would be to wait till the Greenock and Ayrshire company came to Parliament for fresh powers, and then seek redress for their breach of faith.

Mr. RICKARDS: But independently of Parliament, and supposing there were no amalgamation, you would have some redress for a breach of the agreement?

Sargood: No.

Mr. RICKARDS: Then how are you in a worse position by the amalgamation?

Sargood: We should bide our time till the Greenock and Ayrshire company came to Parliament; but if the amalgamation takes effect, that company dies a natural death, and we are deprived of the only remedy we possess—an appeal to Parliament. The saving clause in the general Act only transfers to the amalgamated company obligations existing at the date of the amalgamation, which may only take effect here after the power of constructing the works has lapsed.

Cripps, Q.C. (for promoters): We deny altogether the alleged breach of faith. It is the fault of the petitioners themselves that the work has not been done years ago. At this moment an action is pending in one of the Scotch courts on the subject.

Sargood: I object to any statement upon that point. We allege in our petition a breach of faith by you. In your objections you do not traverse the allegation. It must therefore be taken as an admitted fact, and counsel cannot give evidence as to what is going on in the law courts.

Cripps: The petitioners do not refer to any

other agreement between the parties than that contained in the Act of 1868, and base their charge of breach of faith upon that agreement.

Mr. RICKARDS: That, as I understand it, is the view which the petitioners take of the facts. But we have to do with the facts themselves, not with the opinion of the parties upon the facts.

Cripps: The mutual rights of the parties are defined by the Act of 1868, and cannot be decided by any opinion which either party may take respecting them. Those rights are not to be interpreted by Parliament, but by the courts of law. We do not propose in any way whatever to interfere with them, and Parliament has taken care, in Part V. of the Railways Clauses Act (which we incorporate in our bill), to perpetuate whatever obligations are imposed upon the Greenock and Ayrshire company (section 45). The legal effect of that section is to substitute the new company for the dissolved company in all respects, as to any works which the latter is, at the time of amalgamation, authorised or bound to execute; and as the amalgamated company will represent larger interests, the petitioners will have a greater security for the performance of any rights they may possess under the agreement.

The CHAIRMAN: The *locus standi* of the board of police of Greenock is disallowed.

Locus standi Disallowed.

Agents for Petitioners, *Simson & Wakeford*.

Agents for Bill, *Sherwood & Co.*

LONDON AND AYLESBURY RAILWAY BILL.

2nd May, 1872.—(Before Mr. ADAIR, M.P., Chairman; Sir T. E. COLEBROOKE, M.P.; and Mr. RICKARDS.)

Petition of the GREAT WESTERN RAILWAY COMPANY.

Railway—Station, joint user of—S. O. (in what cases Railway Companies to be heard)—Discretionary power of Court under—Limitation of locus standi—Running Powers—Agreement contravened—by Prior Legislation—Competition.

A bill which empowered a railway company to run over the Aylesbury and Buckingham line, and to use the Aylesbury station, was opposed by another railway company, which worked the Aylesbury and Buckingham line under an agreement, and had a joint occupation of the Aylesbury station. A limited *locus standi* was conceded to the petitioners against this proposal, but they sought for a general *locus standi* on the ground that, under the bill, one-half of the

undertaking of the promoting company would be transferred to the North Western company, who had, by a statutory agreement, undertaken, in 1863, not to subscribe to or work any new line in the petitioners' district. In reply, it was contended that the statutory agreement was not contravened by the bill, this not being a new line, and powers of working the promoters' railway having been granted by Parliament to the North Western company in the Act authorising the line, passed in the year before the present application :

Held, that the *locus standi* of the petitioners must be limited to the station and running powers clauses.

Clause 13 of the bill empowered the company and all other companies from time to time lawfully using their railway to run over and use the Aylesbury and Buckingham railway, and all sidings and stations connected therewith. The Aylesbury station of this line was jointly owned by the Great Western and Aylesbury and Buckingham companies, and the Great Western company now petitioned against the bill on this and other grounds.

The *locus standi* of the petitioners was objected to, because (1) the proposed transfer of a portion of the London and Aylesbury railway to the London and North Western railway company in no way affects the petitioners, and would not, as wrongfully alleged in the petition, be a breach of any agreement existing between the petitioners and the North Western railway company ; (2) the bill contains no provisions for taking lands, &c., for running engines, or for granting facilities affecting the petitioners ; (3) they are not entitled to be heard against the bill on the ground of competition ; (4) they are not the owners, lessees, or occupiers, or workers of the Aylesbury and Buckingham railway, and are not entitled to be heard as to any of the powers sought affecting that railway ; (5) they are only entitled to be heard (if at all) in so far as the bill affects any right of theirs in the Aylesbury station ; (6) they cannot be heard consistently with practice.

Saunders (for petitioners) : The London and Aylesbury line was sanctioned by a bill of last year as an independent line from Rickmansworth to Aylesbury. At present it has no connection either with the Great Western or North Western system, but this bill proposes to transfer a portion of the authorised line, from Rickmansworth to Great Missenden, to the North Western company, leaving the other half of the line, from Great Missenden to Aylesbury, as an independent company. We are now working the Aylesbury and Buckingham line under an agreement, and the compulsory user of the Aylesbury station by the promoters under Clause 13 will injuriously affect us in our occupation and use of that station. The London and North Western company are not mentioned by name in the bill, but they would be entitled to use the Aylesbury station under the bill, because

they would be a company lawfully using the railway of the promoters from Rickmansworth to Missenden, besides which the Act of last year empowers them to enter into agreements for working the London and Aylesbury line. We claim a *locus standi* also on the ground of competition. For example, traffic from Great Missenden finds its way to our line at Princes Risborough and other stations on the Great Western system, and we say that this new line in North Western hands, and made solely by North Western assistance, will abstract from us that traffic. Moreover, an authority to the North Western company to get to Great Missenden will contravene the agreement scheduled to the Great Western and West Midland Amalgamation Act of 1863, by which the North Western bound itself not to enter into agreements for constructing, leasing, working, or subscribing directly or indirectly to any new line in the Great Western company's district. We say that this agreement will be infringed by the bill ; and the Court has held that it is not for you to interpret such agreements ; you only require *prima facie* evidence as to their infringement. (*Cliff. & Steph. Practice*, 10.) The promoters admit that we have a limited *locus standi* as regards user of the station, but I submit that the Referees, exercising the discretion they now have under the S. O., will not limit our *locus standi*.

Venables, Q.C. (for promoters) : According to the construction put upon the S. O. by the Court, as we only seek a joint user of the station, the petitioners would not be allowed a general *locus standi*. As to the agreement of 1863, we are not now dealing with "a new" line. This line was sanctioned last year, and the Act authorised the North Western and the Aylesbury and Buckingham companies or either of them to agree with the promoters for the management, use, working, and maintenance of the railway or any part of it. The North Western company, therefore, already have a statutory power to make agreements for working the whole line if they think fit, and if the agreement of 1863 is violated, it was violated last year. But the very question now raised by the petitioners was raised by them last year, and Parliament decided that the agreement was not contravened by the bill. The question of competition was also decided last year when this line was authorised. No doubt we now extend the line into the Aylesbury station, and to that extent the means of competition may be said to be increased. Parliament, however, in authorising the line last year, did not expect that it would stop in a field, but must have supposed that it would ultimately communicate with the Aylesbury and Buckingham line.

The CHAIRMAN (after deliberation) : The *locus standi* of the Great Western company is allowed against Clause 13 (powers for company to run over Aylesbury and Buckingham railway) ; Clause 14 (terms and conditions of running over) ; and Clause 15 (tolls on railway run over by company) ; and against so much of the preamble as relates thereto.

Agents for Petitioners, *Young, Maples & Co.*

Agents for Promoters, *William Toogood.*

COLEFORD RAILWAY BILL.

6th May, 1872.—(Before Mr. ADAIR, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Petition of (1) the MIDLAND RAILWAY COMPANY.

Tramway—Conversion into Railway—Running powers over, claimed—Under Agreement—Upon former Amalgamation—Bill, how promoted—By independent Company—or colourably—Apprehended injury—Remedy before Arbitrator.

A bill was promoted for the construction, from Coleford to Monmouth, of a locomotive line in place of a tramway acquired by the West Midland railway when amalgamated in 1863 with the Great Western company. At that time an agreement was entered into between the Great Western and the Midland railway companies, whereby the latter obtained running powers over specified portions of the amalgamated system. The Midland company now alleged that, although nominally promoted by an independent company, this was really a Great Western bill, and by virtue of the former agreement petitioners were equitably entitled to clauses giving them running powers over the new line. For the promoters, it was contended that the relations between the Great Western and the Midland companies did not justify the petitioners in opposing the bill of an independent company; and further, that, as any rights claimed by the petitioners arose under the agreement, they must enforce those rights in the way provided by the agreement, the wording of which *prima facie* covered no such claim:

Held, that the petitioners had no *locus standi*.

The bill was one "for authorising the construction of railways from near Monmouth to Coleford, in the counties of Monmouth and Gloucester; and for other purposes."

The Midland railway company urged that the bill should not pass unless clauses were inserted "expressly extending to the Coleford railway the running powers secured to the petitioners by the agreement of March 17, 1863, over all parts of the Great Western railway lying between Worcester and any place in South Wales."

The *locus standi* of the Midland railway company was objected to, because (1 & 2) the bill incorporates an independent company, who are not and ought not to be bound by the relations, whatever they may be, of the Great Western company towards the petitioners, on which the claim of the petitioners is based; (3) the railway pro-

posed will not communicate with the railway of the petitioners, who have no such interest in the traffic of the district, either as competitors with the Great Western railway company or otherwise, as entitles them to be heard; (4) no rights, property, or interests of the petitioners are injuriously affected; (5) they cannot be heard according to practice.

Cripps, Q.C. (for the Midland Railway company): Under an Act passed in 1810, the Monmouth railway company constructed a tramway from Monmouth to Coleford and thence to the Forest of Dean. In 1853 a new company acquired that part of the tramway lying between Monmouth and Coleford, the Monmouth railway company reserving to themselves the remainder of the railway from Coleford into the Forest of Dean. The line of the new company was afterwards leased to the West Midland, which in its turn was amalgamated with the Great Western company, one of the conditions of the amalgamation being that the Midland should have running powers over parts of the West Midland as it existed at the time of its transfer. This bill, though nominally promoted by an independent company, is really a Great Western bill; three out of the five directors named in it are Great Western directors; the Great Western company will have power to subscribe an amount equal to one-fourth of the intended capital, and will work the line. Probably in a short time another bill will be introduced for the amalgamation of this so-called independent company with the Great Western; but meanwhile the Great Western company, by bringing forward a bill not directly in its own name, cannot deprive us of the right of going before a Committee and asking for running powers over the proposed line, to which we are entitled under the agreement scheduled to the West Midland Amalgamation Act. Up to the present time this line has remained a tramway, and therefore we could not exercise running powers over it; but when the line is worked by locomotives, and is thus physically connected with the West Midland, then it becomes a line over which our running powers under the agreement were meant to extend.

Mr. RICKARDS: The Midland company does not exercise its running power as far as Monmouth?

Cripps: No; not below Hereford.

Saunders (for promoters): Substantially, the petitioners say that the bill will take away rights which they enjoy at present. But a mere apprehension of injury will not suffice to give a *locus standi*. Petitioners are expected to point out some definite injury, as a foundation for a right to be heard. (*Cliff. & Steph. 63, Practice*.) The Midland company do not prove that their position will be made worse under the bill. Their rights, if they have any, arise under the agreement; but that agreement says nothing whatever of their right to use the line between Monmouth and Coleford. It only gives them running powers over the "Hereford and Newport sections of the West Midland, and all such other parts of the West Midland railway as lie between Worcester and any place in South Wales, inclusive of such places." Whether the bill is a Great Western bill is not the question. If the Midland

company believe that their running powers under the agreement apply to the Coleford line, let them go before the arbitrator appointed in the agreement. If the arbitrator says that the Coleford line is subject to these running powers, well and good; but the *Great Western Bill* now pending does nothing in combination with this bill to put the petitioners in a worse position than they at present occupy. The *Great Western* seek to subscribe less than one-fourth of the total capital. The company must therefore be looked upon as an independent company. The *Rhymney Railway Bill* (*Petition of Sirhowy Railway Company*; *Cliff & Steph.* 122), is in point.

The CHAIRMAN (after deliberation): The *locus standi* of the Midland railway company is *Disallowed*.

Agents for Petitioners, *Dyson & Co.*

Petition (2) of MONMOUTH RAILWAY COMPANY.

Railway — Tramway — Conversion in part, into locomotive line — Consequent interruption of through traffic — Dissolution of Company — General locus standi — Practice — Objections — Must traverse allegations in petition — or these will be assumed.

A tramway company (called the Monmouth railway company) sold, in 1853, a portion of their system, the portion thus relinquished being still, however, maintained for purposes of tramway traffic, and forming, with the other portion remaining in their hands, a continuous route to the town of Monmouth. A bill was now promoted by a new company to substitute a locomotive line with a different gauge for the first portion of the tramway, and to dissolve the tramway company. The *locus standi* of the tramway company was conceded in respect of the clause providing for their dissolution; they however sought to be heard generally, on the ground of interference with their traffic and prejudice to their interests:

Held, that they were entitled to a general *locus standi*.

(*Per Cur.*) "Petitioners are at liberty to assume anything not traversed in the notices of objection."

The Monmouth railway company, which owned a portion of a tramway extending from the Forest of Dean to Coleford, alleged (*inter alia*) that under the bill the proposed railway from Coleford to

Monmouth would be constructed almost entirely upon the line of an existing tramway between those two points, such tramway having originally formed part of the same system, and still forming, with the petitioners' tramway, a continuous line from the Forest of Dean to Monmouth; and that the proposed line would in fact be made by changing the tramway into a locomotive line on a different gauge, thus destroying the existing through route for the petitioners' traffic, and prejudicially affecting their interests.

The *locus standi* of the Monmouth railway company was objected to, because (1) no land or property of theirs will be taken; (2) that portion of the existing tramway between Monmouth and Coleford which it is proposed to convert into a locomotive line does not belong to the petitioners, and they have no interest in the bill entitling them to be heard; (3) they cannot be heard according to practice.

Cripps, Q.C. (for petitioners): We say that if the tramway which we disposed of—that between Coleford and Monmouth—is converted into a railway, our tramway will be left without any communication with Monmouth. We are therefore entitled to go before the Committee and see that our rights are protected. Section 42 of the bill also provides for the dissolution of the Monmouth railway company.

Saunders (for promoters): We propose to strike out that clause, and we concede to the Monmouth company a *locus standi* against that part of the bill.

Cripps: We should not be satisfied with a limited *locus standi*. The whole tramway, from Monmouth to the Forest of Dean, is now worked by another company under agreement with us, they receiving two-thirds and we one-third of the receipts; but the bill renders the continuance of this agreement impossible, because between Coleford and Monmouth the line would cease to be a tramway.

Saunders: I must put you to proof of this agreement.

Cripps: The notice of objections does not traverse the fact of the existence of such an agreement.

The CHAIRMAN: The petitioners are at liberty to assume anything not traversed in the notices of objection.

Saunders (in reply): The Monmouth railway company, who now have in their own hands the tramway from the Forest of Dean to Coleford, complain that if the bill passes they will meet at the latter point a railway instead of a tramway. If so they will only be in the same position as a railway company whose line meets the line of another company, the gauge of which it is proposed to alter. If the Monmouth company is entitled to be heard against us, any company whose line joins our system must equally be heard if we propose to alter our gauge, as we have the power to do without going to Parliament. As to the agreement under which the tramway of the Monmouth company is worked, it is a terminable agreement which may be put an end to at any moment by either party. The Monmouth company received, in 1853, what they then deemed an adequate consideration for this portion of their tramway. They did not then say, "If you make

a railway you shall buy the whole of our tramway," and it is too late for them to say so now.

The CHAIRMAN (after deliberation): The *locus standi* of the petitioners is *Allowed*.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Martin & Leslie.*

GREAT SOUTHERN AND WESTERN RAILWAY (NORTH WALL EXTENSION) BILL.

6th May, 1872.—(Before Mr. ADAIR, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Petitions of (1) the MANCHESTER, SHEFFIELD, and LINCOLNSHIRE RAILWAY COMPANY; (2) the MIDLAND RAILWAY COMPANY.

Connecting Railway—English and Irish Companies—Alliance between—Cross-Channel Traffic—Competition for—Through-booking—Steamboat powers—Goods Depot—Landowners—De facto and De jure—Railways Clauses Consolidation Act, 1845—Purchase Colourable, and ultra vires—Objections as to—Practice.

A bill, promoted by an Irish railway company for a line to connect its system with the shipping quays of Dublin, and thereby with the station and authorised line of steamers of the London and North Western company, which was to share the cost of constructing the line, was opposed by two other English Railway Companies, having no steamers of their own, but claiming to be interested, by through-booking arrangements, in all cross-channel traffic to Dublin and places beyond. They further represented themselves as owners, for the purposes of an intended goods depot, of certain lands proposed to be taken by the bill. These lands, however, had been purchased since the introduction of the bill, and without Parliamentary powers of any kind:

Held, that the petitioners had no *locus standi*.

This was a bill for enabling the Great Southern and Western railway company to effect a communication between their railway at one extremity of the city of Dublin, and the North Wall at the other and seaward extremity of the city, and with the works of the London and North Western railway company upon the North Wall.

The petitioning companies, whose objections to the bill were identical in substance, alleged that they were carriers of traffic between Ireland and their respective systems of railways in England, *via* Liverpool, and were competitors for such

traffic with the London and North Western company. The latter company already possessed a large and convenient station at the North Wall, *i.e.* the point on the northern bank of the river Liffey, from which the shipping trade between England and Dublin, and places in the interior of Ireland, was carried on. Large warehouses and docks extended nearly the whole length of the North Wall, and the only portion remaining which was available for a goods depot; the promoters sought to acquire under the powers of this bill, their object being, as the petitioners charged, not to obtain lands *bond fide* required for the purposes of their undertaking, but to secure a practical monopoly of the goods traffic passing through Dublin. The petitioners, moreover, claimed to be owners of these very lands themselves, by virtue of arrangements entered into with a line authorised but not constructed, known as the Dublin port and city railway, to which, under its Acts, the requisite powers of purchase had been granted.

The *locus standi* of both the companies petitioning was objected to, because (1) there was no provision by which any of their lands, rights, powers, or privileges were directly or expressly affected or interfered with; (2) the interference (if any) involved in or consequent upon the bill was not of such a nature as to entitle petitioners to be heard; (3) no question of competition was alleged or disclosed entitling them to be heard; (4) there was no sufficient allegation or grievance, according to practice.

H. Lloyd, Q.C. (for the Manchester, Sheffield, and Lincolnshire railway): The bill may be described as one for the creation of a very close partnership and community of interest between the Great Southern and Western (of Ireland) and the London and North Western railways. We have a considerable trade with Ireland, and goods offices at Dublin, and naturally watch with interest the proceedings there of the London and North Western, under cover of their Irish ally. But we have a *locus standi* on other grounds, for we allege ourselves to be owners, jointly with the Midland company, of lands and houses at the North Wall, within the limits of deviation of railway No. 3 authorised by the bill, and forming part of the additional lands proposed to be acquired by the company under Clause 11. These houses and lands were purchased by the petitioning companies with a view to the erection of a goods depot.

[Conveyances handed in.]

Rodwell, Q.C. (for promoters): We say that the purchase was *ultra vires*, and only colourable; the object was to procure a *locus standi*, but the petitioners had no powers whatever to acquire or hold these lands.

Lloyd: The statement that the lands were bought by us to construct a goods depot has not been contravened, and must therefore be taken to be true.

Rodwell: If the case were that of a private landowner, I might be compelled to show with what object the purchase had been made. But here the transaction, on the face of it, is illegal: the petitioners are precluded from buying land except for particular purposes, and they could be stopped

from doing so by any shareholder applying to the Court of Chancery. The land was bought months after the notices were served, and the bill introduced. (To the CHAIRMAN): We do contend that this is as much a colourable purchase and *ultra vires*, as if the Midland company were to buy a piece of land at Hampton Court or Kingston, for the purpose of obtaining a *locus standi* against the South Western railway.

Lloyd: The purchase is *bond fide*. We produce the conveyances, and state the circumstances under which the land was acquired. The Dublin port and city railway is an authorised line, forming a connection between various railway systems converging at Dublin; and power is sought by the two petitioning companies, in another bill before Parliament, to subscribe £25,000 each to the funds of that company, which has statutory powers of purchasing these very lands; and upon these lands the companies mean to construct a goods depot. Their rivalry with the North Western, and the difficulty of acquiring lands at the North Wall, sufficiently account for the purchase, if this bill had never been introduced.

Mr. RICKARDS: Do you allege that the petitioners have any Parliamentary powers of purchase at this point?

Lloyd: Under the general Act, they can purchase additional land anywhere, within certain limits as to quantity, and as long as the land is really to be applied to the purposes of their undertaking.

Mr. RICKARDS: Can you refer us to any Act giving you power to purchase or hold land in Ireland?

Lloyd: I apprehend we could hold land in Canada, under the Railways Clauses Act.

The CHAIRMAN: Every special Act gives power to a railway company to purchase certain lands, and it also gives them power to purchase lands by agreement. But these must be lands approximate to the lands mentioned in the schedule.

Mr. RICKARDS: And they must be lands for the specific purpose of the undertaking which the Act authorises.

Lloyd: Railway companies hold houses in different parts of London, for the purpose of receiving parcels.

Rodwell: But the houses are not the property of the railway companies.

Mr. RICKARDS: Even if the property in those houses were absolutely acquired, that is a different thing from an English company purchasing land in Ireland.

Lloyd: Whether we acquired these lands *intra vires*, or *ultra vires*, we have purchased and paid for them, and are *bond fide* using them for the purposes stated in the petition. And we have already a booking office at no great distance from these lands.

Rodwell: It is nearly a mile away.

Lloyd: We say a quarter of a mile. But there is nothing to prevent us from consolidating our premises, by transferring the booking-office to the new site.

Cripps, Q.C. (for the Midland company): The question whether we have legal power to buy these houses is one of difficulty, which this Court is not competent to try. The agreement for the purchase may perhaps be set aside hereafter; but

at the present moment, you must take us, and not the vendors who have parted with their interest, to be the representatives of the property. This was decided in the *Bradford Water Bill*, 1869 (Cliff. & Steph. 2), where the point had been expressly raised in the notices of objection. Here the notices are silent about it.

Mr. RICKARDS: Is it the fact, as alleged, that the Midland company are, by Parliamentary authority, carriers of traffic between Ireland and their system of railways in England, *via* Liverpool?

Cripps: They have through-booking arrangements extending to all parts of Ireland.

The CHAIRMAN: Have they any power to run steamers?

Cripps: No; they are not themselves carriers in that sense, but they have through-booking arrangements with other companies.

The CHAIRMAN: The Midland company are described as "owners of land on the North Wall:" of how much, and in what way?

[*Beale* (Solicitor): They have for some years possessed a leasehold interest of their premises in Dublin.]

Cripps: Whether our interest be leasehold or freehold, it shows that we have business to be transacted in Dublin, and that land is important to us for that purpose.

The CHAIRMAN: If Parliament had given you power years ago to go to the North Wall, and purchase land there, that would support your present argument.

Cripps: The question raised in this case might equally be raised in the case of a private land-owner.

Mr. RICKARDS: True; but in a particular case we must look into the question whether one railway company, strongly desiring a *locus standi* against another railway company, has, or has not, purchased a piece of land, without Parliamentary authority, merely for the purpose of obtaining a *locus standi*.

Cripps: Only one person can represent the land; and you must take the *de facto* owner. You cannot go into the question of who is owner *de jure*, or whether the directors have been acting strictly within their powers. For that point, if once raised by a shareholder, might take the Court of Chancery days to decide.

Rodwell, Q.C. (in reply): Parties who claim at the hands of Parliament the privilege of *locus standi*, must show that they have acted according to law. *De facto* ownership is not sufficient.

The CHAIRMAN: Where, in your notices, do you traverse the allegation that the land was acquired for a goods depot, or that the purchase was colourable?

Rodwell: We had no access to the conveyance, and had only the book of reference to guide us; but we do say, substantially in our first objection, that they are not the owners of these lands. The petitioners do not really want a *locus standi* against this bill, for their rights and interests will be considered upon the rival bill, promoted by the Dublin port and city railway company.

Mr. RICKARDS: What is the date of the conveyance to the petitioners?

Rodwell: The 10th February. The date of the proposal is the 1st; and according to the conditions

title was to be shown within two months, and the assignment completed within six weeks from that date. The petition was presented in the 23rd February, so that actually the petitioners were not owners at that date. Again the assignment was made subject to the statutory rights of the Dublin part and any company, by the assent to which company the conditions were accepted on behalf of the Midland company. The survey will not concede a *locus standi* on the faith of a transaction which could be rescinded in the Court of Chancery to-morrow.

The CHAIRMAN (after deliberation): The *locus standi* of both the petitioners is *Dismissed*.

Agents for B.L. Sherrin & Co.

Agents for both Petitioners, Wylie & Harkiss.

GLASGOW, BOTHWELL, HAMILTON, AND WISHAW TRAMWAYS BILL.

9th May, 1872.—(Before Mr. ADAIR, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Petition of the CORPORATION and BOARD OF POLICE OF GLASGOW.

Tramways — Municipal Corporation — Right of opposing Competing Scheme—Within and Outside Municipal Boundary.

Competing lines of tramway within the city of Glasgow were proposed, by an independent company and by the municipal corporation, the company's line extending some miles beyond, whilst that of the corporation stopped at the municipal boundary:

Held, that the corporation were not entitled to be heard against the whole scheme of the company, but that their *locus standi* must be limited to those parts of the tramway which competed with their own inside the city.

The bill was one empowering the promoters to lay down a line of tramway about 16 miles long, of which four miles would be within, and the rest would extend beyond the municipal boundary of Glasgow. The corporation themselves promoted an independent line within the city, and they now sought to be heard not only against the tramway of the promoters within the city (as to which their *locus standi* was conceded), but against the whole scheme contemplated by the bill.

The *locus standi* of the petitioners was objected to, because (1) only a portion of the tramways

to be constructed would be within the city boundary; (2) that certain property and interests would not be affected by the whole tramways proposed; (3) according to provisions they were only entitled to appear against the tramways to be made within the municipal boundary.

Sargood, Esq. for petitioners: No doubt it will be said that in the *Val of Clyde Tramways Bill*, 1871 (act, 1871), the same issue was tried and we were unsuccessful. There is, however, an important distinction between the two cases, because we now have a competitive scheme within the municipal boundary. The corporation are the sole possessors of all the existing tramways within the city; and if the promoters had given up so much of their scheme as competes with us inside our jurisdiction, or if the two portions of their scheme were contained in two bills, they might have good ground for saying that we could not be heard against a tramway running entirely outside the municipal boundary. As it is, it would be impossible before the Committee to discuss the merits of one part of their scheme without discussing those of the other part; or to refer to it except as one entire competitive scheme.

Mr. RICKARDS: Is not a *locus standi* against that part of the scheme which is competitive—namely, that within your jurisdiction—a sufficient basis for you in Committee?

Sargood: No, because we cannot show the expediency of rejecting that part without stating our objections to the scheme in its entirety.

The CHAIRMAN: You contend that unless you can discuss the competition which will exist outside the city, you cannot efficiently show the nature and amount of the competition which will exist within?

Mr. BRISTOWE: You say you must be allowed to deal with the case of the promoters as one case?

Sargood: Yes; to say we must not go into that portion of the scheme beyond our boundaries is to say that we must not point out any latent defect destroying the value of the portion within. No injustice can be done by giving us a *locus standi*, for our proposals are limited to what lies inside the city.

Pembroke Stephens (for promoters): As the tramways which the corporation promote stop short at the civil boundary, the petitioners thereby admit that their object will be accomplished if they have in their own hands those tramways alone. In the *Val of Clyde* case the corporation were prevented from going into the general scheme; and the mere fact that here they have a competing scheme inside the municipal boundary gives them no right to oppose tramways intended for the accommodation of suburban districts.

The CHAIRMAN (after deliberation): The *locus standi* of the corporation and board of police of Glasgow, is *Allowed* against such parts of the scheme as are within the boundaries of the city, and so much of the premises as relate thereto.

Agents for Petitioners, Nimmo & Wukaford.

Agents for Bill, Martin & Leslie.

GLASGOW, COATBRIDGE, AND AIRDRIE
TRAMWAYS BILL.

9th May, 1872.—(Before Mr. ADAIR, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Petition of the NORTH BRITISH RAILWAY COMPANY.

Tramways — Railway Company — Competition — Suburban and Metropolitan Tramways—Alleged Distinction between—Mineral and Goods Traffic on Tramways—Use of Railway Waggons on Tramways.

The principle laid down by the Court that metropolitan railways cannot be heard against tramways on the ground of competition applies also to suburban tramways, even where the latter, running for the most part parallel to an authorised line of railway, will be constructed so as to permit the use of railway waggons upon the tramway system, and convey goods and minerals as well as passengers.

The bill was one for the construction of a tramway eight miles long, commencing at the limit of the municipal boundary of Glasgow, and terminating at Clarkston, with branches to certain collieries. Clause 21 of the bill provided that the tramways might be "so constructed and maintained as to permit the use thereon and the passage along the same of waggons, and other vehicles in ordinary use upon railways, for the conveyance of goods and mineral traffic to be drawn by animal power only;" and Clause 22 provided that "the tramways may be used for the purpose of conveying passengers, animals, goods, minerals, materials, and parcels." The petitioning railway company opposed mainly on the ground of competition. The *locus standi* of the petitioners was objected to, because (1) no land or property of theirs could be taken by compulsion under the bill; (2) their rights, property, and interests would not be interfered with; (3) certain tramways would be laid along a bridge constructed over or under the railways of the petitioners, but would be laid upon the surface of and level with the roadways of the bridges, forming part of the public streets and roads, without any interference with the structure; and with the surface of the bridges the street authorities, not the petitioners, had to do; besides which, Clause 26 of the Tramways Act, 1870, incorporated with the bill, protected all parties interested in such bridges; (4) there was no case of competition; (5) the petitioners were not the persons having the control and management of any of the streets which might be interfered with; (6) they were not owners or occupiers of any house, shop, or warehouse within the meaning of the S. O. (as to frontagers); (7) they had no interest entitling them to be heard.

Pope, Q.C. (for petitioners): If this were a railway there could be no doubt it would be a case of competition. As it is, except that the traction is horse-power instead of locomotive power, this will be a competing railway. No doubt the Referees have decided in many metropolitan cases that railway companies cannot be heard against tramways, on the ground of competition. But here the road along which the tramway will run has no omnibus traffic upon it, and to construct such a tramway will be to introduce an entirely new competition with us. No doubt the General Tramway Act contemplates the use of tramways by other than the ordinary tramway carriages; but in none of the decided cases was it contemplated that the tramway should be used for the conveyance of goods and minerals as well as passengers.

Mr. RICKARDS: Within the metropolis the traffic is so enormous that competition bears a somewhat altered aspect from that which it presents in a country district.

Pope: Supposing it should be found, after this bill had passed unopposed, that the tramway could not be possibly worked by horse-power, and next year the promoters came to Parliament and said, "Give us power to use some new patent engine," what chance should we have of resisting such a claim? Thus a competitive railway would be established, and we should have no opportunity of being heard against it. There is an interference with our works, but we do not care for so limited a *locus standi*.

Sargood, Serjt. (for promoters): The Referees have never allowed a railway to be heard against a tramway on the ground of competition (2 Cliff. & Steph. 82-9), and the decided cases are not to be distinguished from this by the fact that our tramway will carry goods.

The CHAIRMAN: You specifically indicate the class of traffic at which you aim, because you take power to run railway waggons over your line, and moreover you lay down certain branches to collieries!

Sargood: It is really done in the interest of the railways and of traders. In other cases the merchants have made a great struggle to compel the tramway companies to construct the lines so as to allow of railway carriages running on them from the railways. In principle there is no difference between competition for mineral and goods, and for passenger traffic—for living and inanimate freight. The *Vale of Clyde Bill* (ante, 137) contained precisely the same clauses as ours, and the tramways ran for some distance parallel with the railway, but the Glasgow and South Western and Caledonian railway companies were refused a *locus standi* on the ground of competition, and were only allowed to be heard against an apprehended interference with bridges and works.

The CHAIRMAN (after consultation): The *locus standi* of the petitioners is *Disallowed*.

Agents for Bill, *Simson & Wakeford*.

Agents for Petitioners, *Sherwood & Co.*

DUBLIN CENTRAL STATION RAILWAY BILL.

13th May, 1872.—(Before Mr. ADAIR, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of (1) the DUBLIN PORT AND CITY RAILWAY COMPANY.

Underground Railway—Central Station—River Walls—Authorised Line—Outer Circle—Tunnel under River—Bridges—Same Lands sought for both undertakings—Occupation—Ownership—Objection upon S. O.—Decision of Examiner—How far material—Title—Compliance with Standing Orders—Distinction between—Evidence—Practice.

A bill authorising the construction of Metropolitan railways was opposed by an authorised railway company (whose line, however, was not made) on the ground, among others, that lands of which they were equitable owners were taken under the bill. Before the examiner, the petitioners endeavoured to prove that they were owners of 70 plots of land in respect of which they had not received notice, but failed in this proof. They now gave evidence of the equitable ownership of portions of these lands:

Held, that the examiner's decision was not binding upon the Referees: and that the petitioners were entitled to a landowner's *locus standi*.

This was a bill for making railways at Dublin, traversing the city, and connecting four or five existing lines of railway. The projected route was to be mainly underground, running behind the southern quay wall, or embankment, which borders the river Liffey for some miles, on its way through Dublin, but coming to the surface at a central point, where it was proposed by the bill to cross over the Liffey, and to build the central station upon the area thus acquired. Beyond this central station shorter lines branched out, north and south, to the existing railway termini.

The petitioners, the Dublin port and city railway company, alleged that they were injuriously affected by one of these spur lines. Their undertaking had been authorised in 1866, under the name of the Dublin trunk connecting railway, and professed to accomplish a similar object, but by a different method, i.e., by means of an outer circle touching the different railways at some distance beyond the city limits, and crossing from north to south by means of a tunnel under the river Liffey. On the borings for this tunnel large sums had been expended, but no other portion of their line had been commenced; and the company were in involved circumstances;

their powers, however, had been kept alive by two renewal Acts. They now alleged, among other things, that "the scheme proposed to be authorised by the bill consists of several railways and a central station to be made through and in the middle of the city of Dublin, for the purposes whereof a large number of the principal streets and quays of the city, as well as the river Liffey, by which the city is intersected, would be seriously interfered with and obstructed, and one bridge across that river shut up, and a great extent of valuable property, including lands and property belonging to your petitioners, would be compulsorily taken."

The *locus standi* of the petitioners was objected to, because (1) they were not owners, lessees, or occupiers of any lands, houses, or other property taken or affected by the powers of the bill; (2) the railway proposed would not compete, as alleged, with any railway belonging to the petitioners, inasmuch as they had no railway to compete with; (3) the only allegation on which they could claim to be heard, that of being owners of property affected by the bill, was untrue. Their names were not in the book of reference, and although they had opposed the bill on S. O., they failed to prove their ownership to the satisfaction of the examiner; (4) the petitioners were not affected in any way according to practice.

Bidder (for petitioners): Unless our allegation that we are owners of lands to be taken is disputed, our *locus standi* is clear, and I am prepared with evidence on the point.

Venables, Q.C. (for promoters): Parliament compels us to give notice to every owner of property touched by our undertaking, and if we fail to do so in any case, the owner is entitled to come before the examiner, whereupon Parliament has created the requisite machinery for trying whether the proper notices have been given to the proper parties. In this case, the petitioners claimed to be owners of no fewer than 70 plots of land taken by us. The case was heard before the examiner, who decided that they were not even owners of one. To put a witness into the box now, would be to re-try the whole question.

Bidder: The decision of the examiner was not as to our title, but as to your compliance with standing orders. We were shown to be occupiers; but inasmuch as the legal estate had not passed to us, and no works had been done by us for a considerable period, your omission to serve us, in addition to the legal owners, was excusable. This Court, I submit, will not take the decision of the examiner on another matter, and shut out the petitioners from proving that they are in equitable possession, and have paid the money.

The CHAIRMAN: The Court will take *prima facie* evidence of ownership.

Mr. Baptist Kernaghan, (solicitor to the Dublin port and city railway company,) deposed that plans had been deposited (equivalent in Ireland to a notice to treat), in respect of the lands required for the northern section of their line, and an arbitrator appointed to determine their value, and that a sum had been paid on account of the lands in dispute, i.e., the point where the borings for the tunnel had been sunk. Only last winter the corporation compelled the company to re-erect

the hoarding round this shaft, which the storm had swept away. The panic of 1866 stopped the works, and prevented the completion of the several purchases.

[Questions were being asked as to the proceedings before the examiner, when]

Mr. RICKARDS said: As we have decided that the examiner's decision is not binding upon us, it is hardly worth while to go into what took place before him.

Venables (in reply): There is another side to the story, but the person who could tell it is not here. I must take your decision on this witness's evidence.

Locus standi Allowed.

Agents for Bill, *Holmes, Anton, Greig & White.*

Agents for Petitioners, *Dorington & Co.*

Petition of (2) the DUBLIN TRAMWAYS COMPANY.

Railway—Interference with Tramways—Sanctioned by Provisional Order, and by Special Act—Analogy to Gas and Water Pipes—Easement—Unlimited locus standi.

Against the same bill, a tramway company petitioned on the ground that the railway, following the same route, would, during its construction, stop the working of the tramway, and the promoters under the clauses of the bill might prevent the tramway from being re-laid. A limited *locus standi* was conceded to the petitioners:

Held, however, that they were entitled to be heard generally against the bill.

(*Per Cur.*) A tramway company are entitled to shew that a railway bill will inflict so great an injury upon them that it ought to be rejected on that account.

The petitioners had obtained power to lay down a system of tramways in Dublin, partly under a special Act of 1871, and partly under a Provisional Order, obtained by a previous company in pursuance of the Tramways (Ireland) Act 1860, the benefit of which Provisional Order was transferred to the petitioners by their own Act of 1871. A portion of these tramways had already been laid along the line of quays, under which it was now proposed to construct the railway of the promoters. The petitioners complained that the bill contained no provisions protecting them from interference, or securing them compensation for any loss they might sustain.

Their *locus standi* was objected to, because (1) they were not the proper parties to complain of interference with streets, which were not vested in them nor under their management or control;

(2) the provisions of the bill were such as were ordinarily inserted, and the petitioners had no special rights under the authority of Parliament or otherwise, which would be interfered with by the proposed works; (3) it was not shewn that any land, house, property, right, or interest of the petitioners would be taken under the bill; (4) no sufficient ground according to practice was alleged.

Clerk, Q.C. (for petitioners): The construction of the railway, as proposed, would prevent us from working the tramways whilst the railway was being made, and, to some extent, would prevent our working them at all afterwards. Part of our line has been already opened for traffic, and the works are being pushed forward rapidly. We allege that the railways are so "laid out as to divert, remove, pass over, under, and along your petitioners' tramways," and we point out the streets and thoroughfares in which such interference is to be apprehended. True, the *solum* of the roadway does not belong to us; but nobody can use the tramway except the owners, on whom a certain regulated monopoly has been conferred.

Mr. RICKARDS: The public has a right of passing over the ground occupied by the tramway with other carriages.

Clerk: No doubt; but with the removal of the grooved rail, the existence of the tramway is destroyed. The promoters are at such a distance below the level of the road, that they can only construct their railway by cut and cover, which must, for the time, put a stop to our traffic; and in the limits of deviation for their central station, they take in the very roadway on which our rails will be laid. The position and line of the tramways authorised by the Provisional Order may be altered, by consent; but not of the tramways sanctioned by the Act of last year.

Mr. RICKARDS: Will any of the tramways, authorised by the Act of last year, be displaced, or rendered unworkable by the bill?

Clerk: We may be prevented from constructing one of them, at Carlisle Bridge. Against the *Mid-London Railway Bill*, where the line could not be constructed without destroying the tramway, the North Metropolitan tramways company were allowed to appear; but I admit that the *locus standi* was not argued. We ought either to be protected from harm, or else secured full compensation.

Mr. RICKARDS: It is somewhat analogous to the case of gas pipes and water pipes. There are provisions in the general Acts for the protection of gas and water companies, whose pipes are interfered with: but there is no such provision for protecting tramway companies.

Clerk: No; there are neither general nor special provisions. The railway company schedule the roadway at the North Wall, upon which the tramways are now laid.

Venables, Q.C. (for promoters): There has been nothing said to shew that we shall prevent the construction, or, after a temporary disturbance, the working of any portion of these tramways; for it will not be necessary for us to diminish the area of any street. As in the case of gas and water pipes and sewers, the owners are entitled to protection, and to compensation in case of damage: as to clauses, therefore, we have been

willing to concede a *locus standi*. We are not likely to make use of the extreme limits of deviation to stop a tramway, the whole value of which we should then have to pay. But, admitting the right of petitioners to see that the damage done to them is reduced to the smallest point, what business have they to challenge the policy of the line, its finances, its engineering, or its direction? They have only an easement in certain streets, as to which, other persons having charge of those streets would be entitled to be heard. As the *locus* of the North Metropolitan tramway company was not objected to, it affords no precedent. All the allegations of this petition really go to clauses. The petitioners cannot be entitled to contend that our bill should be rejected because of its interference with their tramway.

Mr. RICKARDS: They would be entitled to shew that the bill would inflict so great an injustice upon them that it ought to be rejected on that account.

Venables: All they can really want are clauses.

The CHAIRMAN (after consultation): The *locus standi* of the petitioners is *Allowed*.

Agents for Petitioners, *Sherwood & Co.*

DUBLIN PORT AND CITY RAILWAY BILL.

13th May, 1872.—(Before Mr. ADAIR, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of (1) PROMOTERS OF THE DUBLIN CENTRAL STATION RAILWAY BILL.

Railway—Authorized Undertaking—New Works—Rival Company, not incorporated—Competing Scheme.

A railway company, whose line was authorised but not made, proposed to construct additional works. The bill was opposed by the promoters of a rival undertaking, who alleged that theirs was a better plan for the accommodation of through traffic at Dublin, and further, that the proposed new line would compete with the line they themselves contemplated:

Held, that the petitioners had no *locus standi*.

This was "a bill to empower the Dublin Port and City railway company to construct additional works, to enable certain other companies to subscribe to the company's undertaking, and for other purposes."

The petitioners were promoters of a pending bill for making a central station in Dublin to accommodate the various railway lines there, and

for constructing a short line to connect all the different systems; and they alleged that their scheme was preferable to that contemplated by the bill, and further that the connecting line would compete with their own system.

Their *locus standi* was objected to, because (1) the petition disclosed no grounds entitling them to be heard; (2) they did not shew that the further powers sought by the bill would prejudice their undertaking; (3) no case of competition was established; (4) no lands, &c., of the petitioners would be taken; (5) they had no interests entitling them to be heard.

Venables, Q.C. (for petitioners): We propose to open a direct communication between the two parts of the town, and that communication affords the best remedy which can be devised for the existing inconvenience to traffic. The Dublin Port and City line, though authorised, is not yet constructed. It was authorised in 1864-5; but though its powers have been revived from time to time, nothing has yet been done, and the bill will in fact compete with the one we propose. We therefore ask to be heard for the purpose of satisfying Parliament that it is inexpedient to extend the term for the completion of the works; that the additional line would be part of a competing railway; and that we now propose to make a better line.

Bidder (for promoters): The case set up by the petitioners is quite untenable. They are really invaders coming to complain that an existing company competes with the line they propose to make. It is not true that our new line does compete or interfere with the Dublin central station scheme; and there is only one case in which the Court ever grants a *locus standi* to a competing scheme against an existing undertaking—that is, where the promoters are both competitors before Parliament, and seek to take the same lands.

The CHAIRMAN (after deliberation): The *locus standi* of the Dublin Central Railway Company is *Disallowed*.

Agents for Petitioners, *Holmes, Anton, Greig & White.*

Agents for Bill, *Dorington & Co.*

Petition of (2) the LONDON AND NORTH WESTERN RAILWAY COMPANY.

Railway—New Works—Subscription to Irish Railway by English Companies—Opposition by English Railway Company—Competition—Steamboat Powers—Apprehended Interference with Traffic—Quay and Steamboat Berth—Ratepayers—Representation—Corporation—Road Authority—Surplus Lands—Demise of, to other Companies—Landowners—Pre-emption.

An Irish railway company asked for powers to construct additional works, and to enable

certain English companies to subscribe to its undertaking. The bill was opposed by another English railway company possessing statutory powers of subscription to several Irish companies, with whom arrangements were proposed to be authorised. Four English companies competing with the petitioners for Irish traffic were empowered by the bill to agree with the promoters for "the management, use, working, and maintenance" of their undertaking; two of these companies were further authorised to subscribe to the undertaking; and under the bill the promoters might sell surplus lands to the subscribing companies. The petitioners urged, in addition, that their quay and shipping berth at Dublin would be interfered with by the proposed works. It was objected that the corporation of Dublin, who were the road authority, were the proper persons to be heard as to apprehended interference with traffic (and their *locus standi* was admitted); while, as to the alleged competition, it was contended that the bill merely rendered an existing competition more effective:

Held, that the petitioners were entitled to a *locus standi*.

The London and North Western railway company alleged (*inter alia*) that they were subscribers to various Irish companies mentioned in the bill; that under the bill the promoters would have power to make agreements with four English companies—the Midland, the Great Northern, the Sheffield, and the Great Western (among ten others), for various purposes, including "the management, use, working, and maintenance" of the promoters' railways; that the Midland and the Sheffield companies were further empowered to subscribe £25,000 each for the purposes of the undertaking, and to buy surplus land; and that those provisions introduced substantially a new competition, entitling the petitioners to appear against the bill. They also alleged interference by the proposed works with Wapping Street, one of the approaches to the petitioners' quay and shipping berth at the North Wall.

The *locus standi* of the petitioners was objected to, because (1) the bill will not obstruct or injuriously interfere with Wapping Street, and the petitioners have no property in or control over that street, which is under the control of the corporation of Dublin, who have petitioned, and whose *locus standi* is not objected to; (2) the buildings and premises of the petitioners on the North Wall are by clause 8 expressly exempted from the compulsory powers of the bill, and cannot be taken or interfered with; (3) the bill empowers the promoters and the ten railway companies named in

the schedule (including the petitioners) to enter into the usual traffic arrangements, but these are merely permissive, without preference or partiality to one railway company over the others, and give the petitioners no right to be heard; (4) there is no case of competition; (5) and no sufficient interest.

Little (for petitioners): Power is sought in the bill to make arrangements with us; but as this is merely a permissive power, we have nothing to say to it. Up to the present time, however, the four English companies mentioned in the bill have never obtained any footing at all in Dublin. We are entitled to be heard against any attempt on the part of these companies to compete with us, especially as the bill empowers two of them to subscribe towards the present undertaking. It is clear that by means of this subscription it is intended to make that which is now merely a nominal competition, effective and real. Then Clause 28 empowers the company to demise to the subscribing companies or any of them for a term of 999 years, or for a less period, "any of the lands now, or at any time hereafter, the property of the company, and not required by them for the purposes of their undertaking." That is to say, instead of the landowner having the right of pre-emption, as he otherwise would have, the promoters may sell the land to the subscribing companies, the day after they have got it.

Mr. RICKARDS: The adjoining landowner whose right of pre-emption would be over-ridden might complain of this clause, but I do not see how it affects you?

The CHAIRMAN: You are afraid these companies will in this way get land to make a station in competition with you?

Little: Yes. Under the guise of a local railway the promoters may obtain compulsory powers over land really for the use of the Sheffield and the Midland companies, which would thus secure indirectly what they would have very little chance of obtaining by direct application to Parliament. As to interference with our quay at the North Wall, the proposed line crosses Wapping Street, and it is of great importance to us that the traffic at this point should not be obstructed. The promoters object that the corporation of Dublin, who petition against the bill, are the proper parties to be heard against interference with the street. Such a proposition might be a sound one if we were represented by the corporation; but though we are ratepayers, we have no vote, and, therefore, have no voice in electing the corporation. Moreover, the corporation have no interest in preventing delay in transmitting goods from Dublin to other parts of Ireland.

Mr. RICKARDS: You allege in the petition that the four English companies mentioned "are either engaged in competition" with you for Irish traffic converging at Dublin, or are in alliance with competitors of yours. Have any of the four companies power to carry traffic to Dublin?

Little: Not directly. They have power to use the boats of the City of Dublin steam packet company, and to quote through rates. If the bill passes, these companies will go to Par-

liament and say, "Under the Dublin Port and City Bill, power was given to make arrangements and subscribe money to this undertaking in Dublin. We have subscribed so much capital. It is hard now that we should not have the right to run steamboats." The bill, therefore, should be treated as though it contained steamboat powers.

Bidder (for promoters): As to the claim to be heard on account of interference with Wapping Street, the proper parties to appear are the road authority. The railway company are simply private occupiers, and are nothing more than traders on a large scale. "Power to demise lands to the subscribing companies" simply enables us to take lands by agreement for extraordinary purposes, other than the construction of a railway station, and beyond the scheduled lands, to the extent of twenty acres. Supposing, however, we sought powers to take 50 or 100 acres, what is that to the North Western railway company? We do not schedule their lands, and if, because they occupy certain premises and are carriers in Dublin, they are thereby entitled to a *locus standi* against such a power in this bill, by parity of reasoning, any other carriers, or traders, or occupiers in Dublin, might make the same claim to a *locus standi*. As to competition, the petitioners admit that it exists already; and assuming the statements in the petition to be true, the bill will only make that competition more effectual. If the four companies have power to cross the Channel now there is existing competition; and the Referees have decided repeatedly that they will not grant a *locus standi* against a bill which merely seeks to improve existing competition. If the four companies have not power to cross the Channel, this bill will not give it to them.

The CHAIRMAN (after deliberation): The *locus standi* of the London and North Western railway company is *Allowed*.

Agent for Petitioners, *Blenkinsop*.

GREAT WESTERN RAILWAY BILL.

18th May, 1872.—(Before Mr. ADAIR, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Petition of (1) EBBW VALE STEEL, IRON, AND COAL COMPANY.

Railway Company—Footpath—Deviation—Inconvenience to Traffic—Previous Legislation—Parliamentary Obligation to Construct Archway—Non-fulfilment of—Practice—Allegations in Petition—Locus standi not limited to.

In 1866 a railway company were empowered to make a deviation in a footpath, and for that purpose undertook to construct an additional

archway for the accommodation of traffic, such traffic being then carried through a single archway, also used by an iron and coal company, in connection with their works. The railway company made the authorised deviation in the footpath, but did not fulfil the obligation to construct an additional archway, and allowed the time for doing so to expire. They now promoted a bill under which they sought power to make a further deviation in the footpath. The iron company alleged that they would be prejudicially affected by this alteration, which would increase the traffic flowing under the single archway, and thereby increase the risk of accident. The promoters conceded the *locus standi* of the petitioners against the footpath clause; but objected to their being heard upon allegations in the petition having reference to the Act of 1866:

Held, that as the *locus standi* of petitioners is not limited to parts of a petition, the iron company were entitled to be heard upon their allegations respecting the footpath, as well as against such of the clauses of the bill, and so much of the preamble, as related thereto.

Section 19 of the bill authorised the Great Western railway company to make a deviation in a public footpath near the Pontypool Road station, and to appropriate parts of the existing footpath to the purposes of their undertaking.

The petitioners, the Ebbw Vale steel, iron, and coal company (limited) alleged that as lessees of the Pontypool ironworks, the further deviation proposed would interfere with their works, and injuriously affect them; and they asked to be heard against Clause 19, and any other clause affecting their property.

Their *locus standi* against Clause 19 was conceded, but the promoters objected that "Paragraphs 6, 7, and 8 of the petition relate to matters irrelevant to the objects and provisions of the bill, and the petitioners have no right to be heard against the bill in respect of those matters."

Colborne, Solicitor (for petitioners): In paragraph 6 of our petition we refer to the Great Western Company's Act of 1866, under which the company took power to deviate this footway. It was then provided that they should take the footway under their line by means of a new archway, or by enlarging the span of the existing archway, constructed by them for our use. This Parliamentary obligation has not been fulfilled, and we, therefore, object to their proposal further to divert the footway, which will increase the traffic through the existing archway

run trains through that archway in connection with our works, and the effect of the present proposal would be to increase the risk of accidents to foot passengers there.

Mr. RICKARDS: Till the Great Western company have made a separate archway, the public have the right to pass through your archway?

Colborne: We do not admit their right, but they do pass through it.

Mr. RICKARDS: Has the time expired for making the separate archway?

Saunders (for promoters): Yes; we do not object to the petitioners being heard, except as to those parts of their petition referring to the Act of 1866.

Mr. RICKARDS: If we give them a *locus standi* against Clause 19 they will be heard in respect of such paragraphs of their petition as relate to Clause 19.

Colborne: We also ask to be heard against Clauses 20 (power to deviate footpath), 21 (provision for altering footpath), and 24 (as to purchase of land).

The CHAIRMAN: The *locus standi* of the petitioners is *Allowed* against Clauses 19, 20, 21, and 24, and so much of the preamble as relates thereto.

Agent for Petitioners, Lewin.

Petitions of (2) GLYNCORRWG COLLIERY COMPANY AND OTHERS; (3) THE SOUTH WALES MINERAL RAILWAY COMPANY.

Railway Company—Gauge, Change of—Previous Legislation, Non-appearance Against—Petitioners Affected by—Cannot be Heard to Complain of—Must be Affected by Bill itself—Vigilantibus, non dormientibus, leges Subveniunt.

Two petitioning companies alleged that an Act of the promoters, passed in 1866, had injuriously affected them. It did not appear that the petitioners were affected by the present bill:

Held, in accordance with precedent, that petitioners cannot be heard to complain of previous legislation where they allege no case of injury under the bill; and *locus standi* therefore disallowed.

The petitioners complained of a change of gauge authorised in an Act of 1866, during the progress of a Great Western Bill in Parliament, such change being without their sanction or knowledge.

The *locus standi* of the Glyn-corrwg Colliery company and others was objected to, because

(1) no lands, &c., of the petitioners are taken; (2) Clauses 77 and 78, to which alone any objection is raised, show no such interest as entitle the petitioners to appear; (3) the bill does not affect any property, rights, or interests of the petitioners; (4) they cannot be heard according to practice.

The *locus standi* of the South Wales Mineral railway company was objected to on similar grounds: but as to Clause 77 it was stated that "the petitioners are only entitled to be heard so far as that clause confers powers upon themselves, and the promoters are prepared to strike such powers out of the clause."

Sir Mordaunt Wells (for both petitioners): In 1866 the Great Western brought in a bill which originally contained no power to alter the gauge, but was so altered during its progress as to give them that power. We were therefore taken by surprise; and now the Great Western company come to Parliament, submit that we have a right to ask for protection.

Mr. RICKARDS: You do not complain that anything proposed under the bill will affect you?

Wells: No.

Mr. RICKARDS: Can you refer us to any precedent in which a *locus standi* has been given to petitioners who are not affected by the bill itself, but merely consider themselves aggrieved by a previous Act of the company?

Wells: I cannot refer to any such precedent. But an injustice having been done by previous legislation, I claim a right, when the company again comes before Parliament, to appear for the purpose of redressing that injustice and of procuring as it were, an injunction against those who are responsible. We should have had an undoubted right to appear in 1866 had not the promoters altered their bill behind our backs. In the *Gazette* notice and in the bill itself there was no indication that they intended to take up the broad gauge.

The CHAIRMAN: Why did you not petition the House of Lords?

Wells: Because we did not know of the alteration made in the bill in this House.

The CHAIRMAN: *Vigilantibus, non dormientibus, leges subveniunt.*

Mr. RICKARDS: Is not your remedy by bill?

Wells: We are now, with others, promoting a bill by which we seek compensation for the injury we say has been inflicted upon us; but the Committee may say: "This is not your proper remedy; you must go before the Committee to which the Great Western bill is referred."

Mr. RICKARDS: We must proceed according to precedent. As far as I can recollect, the Referees have never given a *locus standi* except in a case where the bill itself has affected the petitioners.

The CHAIRMAN: The *locus standi* of the Glyn-corrwg Colliery Company and others is *Disallowed*. The *locus standi* of the South Wales Mineral Railway Company is *Disallowed*.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Sherwood & Co.

SOUTHERN RAILWAY BILL.

3rd June, 1872.—(Before Mr. ADAIR, M.P., Chairman; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Petition of the GREAT SOUTHERN AND WESTERN RAILWAY COMPANY.

Railway—Working powers—Agreement—Implied condition of Confirmation by Shareholders—Wharnclyffe Meeting; Ratification by—New Agreement with third Company inconsistent with old Agreement—Alleged inchoate Agreement.

An agreement was entered into between two railway companies, by which the Great Southern, under the authority of an existing Act of the Southern company, agreed to work the line of that company, when completed, for a term of years. The Southern company now promoted a bill authorising them to enter into a similar working agreement with another railway company, and alleged that the original agreement, though bearing the common seal of the respective companies, was invalid, not having been submitted to, or ratified by a Wharnclyffe meeting of the Great Southern shareholders:

Held, on petition by the Great Southern company, that, the line to be worked being yet incomplete, so that there was nothing upon which the agreement could operate, the delay of the petitioners in procuring the ratification of the agreement afforded no reason for depriving them of a *locus standi*, against a bill which would authorize the Southern company to enter into other arrangements inconsistent with the agreement.

The bill was one empowering the Southern railway company to make working agreements with the Waterford and Limerick company and the Great Western company. The Southern railway was authorised in 1865 to run from the Great Southern and Western at Thurles to join the Waterford and Limerick line at Clonmel. No portion of the authorized line was yet completed. The Act of 1865 authorised the company to enter into working arrangements with the petitioners, and in 1871 an agreement of this nature was entered into, the petitioners undertaking to work the Southern railway for a period of ten years from the date of its opening. In consideration of this agreement (to which the common seals of the respective companies were

attached), the petitioners withdrew their opposition to a bill promoted by the company in 1871.

The petitioners alleged that by the present bill the Southern railway company ignored the agreement, and were now seeking powers wholly inconsistent with it.

The *locus standi* of the petitioners was objected to, because "the allegation that the petitioners have entered into a working agreement with the Southern railway company, which that company seeks to evade, is incorrect and unfounded, the petitioners having failed to ratify the proposed agreement, notwithstanding the request of the Southern railway company that they would do so; and the provisions for traffic arrangements comprised in the bill are not such as to give the petitioners any right to be heard."

Clerk, Q.C. (for petitioners): It is alleged that the agreement of 1871 was entered into by the respective companies conditionally on its confirmation by the shareholders, and that as it has not been submitted to or ratified by the shareholders of either company, it is an inchoate agreement. In a certain sense all agreements of this kind are provisional, because, after they have been executed and sealed, and before they come into actual operation, the General Act of 1863 requires that they should be ratified by the shareholders. Subject, however, to this limitation, there is nothing on the face of the agreement to show that it is not an absolute agreement; it was a condition of our withdrawal from opposing the bill of 1871. The Southern railway company now think they can get better terms elsewhere. As the line is not opened, and there is, therefore, no railway for us to work, there is no immediate reason for confirming the agreement, but we are quite ready to submit it to our shareholders. The existing agreement is virtually in the interests of the London and North Western and the Great Southern and Western; but under this bill the promoters contemplate an absolutely inconsistent agreement with the Waterford and Limerick and the Great Western.

Bidder (for promoters): On the face of the bill there is nothing affecting the petitioners, and they have no more right to be heard against it than any other railway company in the kingdom, who choose to say, "It does not suit our interest that this company should be in alliance with the Great Western." The petitioners found their right to be heard upon an inchoate agreement.

The CHAIRMAN: As the line is not completed or opened for public use, there is at present nothing upon which the agreement can operate?

Bidder: No; but owing to the negligence of the petitioners in failing to procure the ratification of the agreement at a Wharnclyffe meeting of their shareholders, it is at the present moment an agreement having no Parliamentary authority, and no operation.

Mr. RICKARDS: But you have not submitted it to a Wharnclyffe meeting either?

Bidder: What is the use of our doing so if the petitioners refuse, as we say they have refused? The fact is, they only wish to stand upon the agreement, now that they find us about to agree with other parties. Even supposing this were not an illegal agreement, the peti-

tioners cannot be entitled to a *locus standi*, for the bill does not repeal the agreement of 1871, nor does it interfere with their legal or equitable rights under that agreement. We could not, in fact, work the line at the same time through two different companies; but the fact that we take Parliamentary powers to enter into a working agreement with another company does not invalidate or in the slightest degree interfere with the legal position of a company which already has a working agreement with us. This agreement is neither valid nor operative; but if it be operative, and if we, under this bill, do anything inconsistent with the legal or equitable rights of the Great Southern and Western company, they have their remedy against us in a court of law or equity.

Mr. RICKARDS: Not if the Southern company obtain statutory powers, under this bill, to make a working agreement with another company inconsistent with the existing agreement.

The CHAIRMAN (after deliberation): The *locus standi* of the Great Southern and Western railway company is allowed.

Locus standi Allowed

Agents for Petitioners, *Sherwood & Co.*

Agents for Bill, *Dorington & Co.*

TRAMWAYS PROVISIONAL ORDERS (No. 3) BIRMINGHAM (CORPORATION) TRAMWAYS BILL.

6th June, 1872.—(Before Mr. ADAIR, M.P., Chairman; Mr. BRISTOWE, M.P.; and Mr. RICKARDS.)

Petition of the BIRMINGHAM TRAMWAYS COMPANY, and the BIRMINGHAM AND STAFFORDSHIRE TRAMWAYS COMPANY.

Tramways—Board of Trade—Provisional Order—Jurisdiction of Court as to—Municipal Corporation—Tramway Company, Competing Bill promoted by—Tramways outside and within Borough Boundary—Connecting Lines—Power of Construction—Conditions of User—Practice—New Case Cited—Reply Allowed.

The Board of Trade issued a Provisional Order authorising the corporation of Birmingham to construct certain tramways within the borough. Two private trading companies had already constructed, or were authorised to construct, under statutory powers, suburban tramways extending to the municipal boundary, but Parliament had in 1870, and again during the present year, rejected their proposals to enter the borough, upon the opposition of the corporation. The petitioners now asked for leave to appear

and urge in Committee that the corporation should bind themselves to construct, within a period of twelve months, the tramways authorised by the Provisional Order; and further that, as in all probability, the petitioners would use and work the Corporation system, provision should be made for fixing reasonable rates of user:

Held, upon these facts, that the petitioners had no *locus standi*.

Where counsel for promoters cited, in aid of his argument, a decision given during the current session, counsel for petitioners was allowed to reply, distinguishing that case from the case before the Court.

This was a bill comprising a Provisional Order for the construction, by the corporation of Birmingham, of certain tramways within the borough.

The petitioners submitted that the Order should make it imperative upon the corporation to construct the tramways within the period of twelve months from the confirmation of the Order by Parliament, and that, failing construction within the period so limited, provision should be made for the transfer to the petitioners of the powers of the Order, and that the corporation should be debarred from opposing in Parliament any application by the petitioners for the exercise of such powers. The petitioners further asked that the Order should provide for the use by them of the corporation tramways upon such terms and conditions, and subject to such regulations, as might be agreed upon, or settled by arbitration.

The *locus standi* of the petitioners was objected to, because (1) they did not oppose the grant of the Provisional Order by the Board of Trade, and are not, therefore, now entitled to be heard; (2) no tramways, works, lands, or buildings of the petitioners will be interfered with, and no right or interest prejudicially affected; (3) the petitioners have not exercised the statutory powers conferred upon them; (4) the tramways proposed will cause no competition with the petitioners' tramways; (5) the petitioners have no right to ask for special and exceptional clauses for their protection; (6) they cannot be heard according to practice.

The CHAIRMAN: When this case came before the Referees last Monday they declined to hear it, considering that the Order of the House of May 30 had withdrawn from their jurisdiction all claims to a *locus standi* against the Provisional Order. On further inquiry, however, it appears that although the language of the Order of the House is explicit, it is not understood in that sense in practice; and there are precedents in which the Order was in similar terms, yet the Referees heard and adjudicated upon opposing petitions. They are, therefore, now pre-

pared to hear the objections to the *locus standi* of the petitioners.

Bidder (for petitioners): The two companies who petition are practically amalgamated. The Birmingham and Staffordshire tramway was authorized in 1870, and runs to the north-western boundary of the borough. It is now open for traffic, and a bill is before Parliament this year for its extension. The Birmingham tramways run from a point on the southern boundary of the borough towards Moseley; there is also a line authorized, but not made, from the northern boundary of the borough up to Aston. When the bills for these tramways came before Parliament in 1870, they comprised complete schemes for the accommodation of traffic into Birmingham, and did not stop in the outskirts; but the corporation claimed to exercise exclusive authority over the streets inside the borough, and we struck out of our bill that portion of our scheme, on the faith that the corporation would complete the communication. As it is, our tramways are practically useless and unprofitable, unless they are extended into the borough; and nobody would have made tramways of that kind without a practical assurance that they would ultimately be so extended. Nothing, however, having been done by the corporation since 1870, we came this year with a bill for an extension; but after the deposit of our bill the corporation obtained from the Board of Trade this Provisional Order. We were therefore promoters of competing schemes, and if we were in that position now, we should undoubtedly have had the right to be heard. But the Committee rejected our bill on the representation of the corporation that a Provisional Order was pending, and that they were the proper persons to do the work. Thus the corporation have succeeded in shutting the door against us: but if they continue our tramway, we running over their lines, and developing our traffic into the borough, our purpose will be served. All we want is to be sure that the corporation will make the tramways. But under this Provisional Order they are not compelled to make them; and having succeeded in killing our bill, they may, if they please, decline to spend any money on tramways after all. In fact, several members of the corporation have stated that the Provisional Order does not bind them to anything.

Mundell, Q.C. (for corporation): You are tied to the four corners of your petition.

Bidder: I decline to be so tied. I am stating facts which occurred this year in Parliament in relation to this very bill, and if my statement of facts is disputed, I shall ask to have the minutes of proceedings before the Committee referred to the Court for their information. We claim the right to go before the Committee and ask for such clauses as will ensure the execution of the work by the corporation within a certain limited time, or, failing that, to provide for its being done by us or some other person. We are not interlopers here; we have a Parliamentary status, and have made our tramways under Parliamentary authority. Moreover, as several of the proposed tramways will be continuations of our own, and the corporation are prohibited from working them, we are *primâ facie* the persons

who will have to work them, and therefore are entitled to ask for reasonable rates.

Mundell: We do not propose to effect any junction with the tramways of the petitioners.

Bidder: That is an additional reason why we should be heard.

Mundell: The *Vale of Clyde Tramways Bill* (*Ante*, 137) was the converse of this, and is entirely in point. It was there decided that the corporation, who sought for certain rights over tramways beyond their boundary, had no *locus standi*, though there were actual physical junctions between their tramways and those of the promoters. The petitioners voluntarily constructed their tramways in 1870, after the refusal of Parliament to allow them to lay down any within the borough. They have no right now to ask that the general law should be disturbed, which allows us two years for the completion of our tramways, nor have they any right to ask for exceptional legislation with regard to their use of our system. If this were the case of a railway instead of a tramway, and we did not touch their line, they would have no right to come to Parliament and say, "Carry our goods at arbitration rates." Our tramways do not join theirs, and may never do so; and a mere allegation that it is expedient to extend their system into the borough and to work it as part of our undertaking, cannot give them a *locus standi*.

Bidder was heard to distinguish the *Vale of Clyde Tramways Bill* from that before the Court. Here the petitioners were left outside the borough boundary, not of their own will, but in order that the corporation themselves might continue the tramways into the borough; and if the petitioners were not assured that the traffic into the borough would be carried at reasonable rates, they would lose the opportunity of getting that remuneration which Parliament clearly intended they should have when their bill was passed.

The CHAIRMAN (after deliberation): The *locus standi* of the petitioners is *Disallowed*.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Sharpe, Parker & Pritchard.

NOTTINGHAM AND LEEN DISTRICT SEWERAGE BILL.

24th June, 1872.—(*Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Petitions of (1) the NOTTINGHAM WATER COMPANY; (2) the NOTTINGHAM GAS COMPANY.

Sewerage—Purification of Rivers—Joint Action as to—Local Boards—Sewer Authorities—Union of Districts—Public Health and Sewage Utilization Acts—Rates—Borrowing Powers—Intercepting Sewer—Water Company—Gas Company—Apprehended Interference with—Absence of Plans—First-class Bill—District.

ance of Pipes—House of Lords—Protective Clause—Inadequacy of—Ratepayers—Representation—Owners of Property—Complaints of, and of Ratepayers—Addressed to Home Secretary—and to Parliament—Distinction between—Practice.

A bill uniting, for sewerage purposes, eight districts in the neighbourhood of Nottingham, one of which was said to dissent from the union, though it did not petition, was opposed by a water company carrying on business in nearly all, and by a gas company at work in each of these districts. Both companies were apprehensive of interference with their works, and contended that, by the bill, powers beyond those conferred by the general Acts on sewerage authorities were sought, whilst the right of opposition before the Secretary of State, given to owners of property and ratepayers, under the general Acts, was taken away. The promoters rejoined that the bill was a mere consolidation of powers existing in the hands of the eight district boards individually. The *locus standi* of the petitioners had been disallowed in the House of Lords; but, at the instance of the Committee there, a clause had been inserted by the promoters to protect the pipes, &c., of petitioners. This clause was complained of as inadequate, and as, in itself, a departure from the general law:

Held, that the companies were entitled to a *locus standi* against the clause in question.

(*Per Cur.*) "The fact that the general law gives power to any ratepayer to appear before the Secretary of State, does not furnish any authority for the claim of a ratepayer to appear before a Committee."

The bill had for its object to unite the eight parishes or places mentioned, and at present governed by local boards, or other sewer authorities, into one district, under a joint sewerage board, to be called "The Nottingham and Leen district sewerage board," with a view to the purification of the waters of the Trent and the Leen, and to the joint action, in respect of sewerage arrangements, of the several local authorities in the town of Nottingham and its neighbourhood, whose districts when united, would comprise an area of 12 or 15 miles. Upon the board thus constituted the bill proposed to confer "in and without, and in relation to the district, all the powers which any sewer authority as such has in, without, and in relation to its district, under

the Sewage Utilization Acts, and the other powers of a sewer authority as such," except the power of levying rates, and borrowing money; in place of which a sewerage fund was created by the bill to which the several constituent sewer authorities were required to contribute in specified proportions; and the board was enabled by the bill "to make calls of money from time to time in respect of such contributions, and to borrow on the security of the sewerage fund, and of the contributions of the several constituent authorities, and of the other income and receipts of the board, any sums of money not exceeding £50,000."

The waterworks company had for many years supplied the town and neighbourhood of Nottingham with water and alleged that this supply was in part, derived from lands, springs, and reservoirs in the valley of the Leen so situated that these might be acquired for, or injuriously affected by the works, undertakings, and powers authorised and conferred by the bill, and that a water-wheel and other works driven by the river Leen, with rights and easements connected therewith, would be injuriously affected by the exercise of such powers. The petitioners likewise complained that the machinery of the bill was complicated and defective, having regard to the professed objects in view, that it did not propose any definite scheme for diverting sewage from the rivers, and that the pecuniary limit named was insufficient for carrying out effectively any adequate scheme. They further objected, as ratepayers, to the increase which must take place in the rates of the several districts in which they were interested, without corresponding advantages; and contended that the provisions inserted in the bill were inadequate for their protection. In the absence of deposited plans, it was impossible to know what lands were to be taken, or works constructed, or rightly to estimate the nature and extent of the liability about to be incurred.

The petition of the gas company was very similarly worded. This company, however, carried on business and paid rates in all the constituent districts. It, as well as the water company, was constituted under Act of Parliament.

The *locus standi* of the water company was objected to, because (1) the bill contained no provisions for taking or interfering with any of their lands, reservoirs, waters, waterworks, property, or rights; (2) the several constituent sewer authorities had power, under the public Sewage Utilization Acts, to make intercepting sewers and other works, and it was proposed by the bill to unite those authorities into a joint board, but not to empower the joint board to construct any works or take any lands which the constituent authorities might not already construct or take; the parts, therefore, of the petition which alleged that property, &c., of the petitioners might be taken, &c., under the bill were incorrect and unfounded; (3) the petitioners were not in any way entitled to represent the ratepayers and had no right to be heard on the subject of rates; (4) the deposit of plans, &c., was unnecessary, inasmuch as the bill contained no power to make second class works not already

authorised; (5) the allegations as to the defective machinery, &c., of the bill, even if such allegations were true (which the promoters denied), gave petitioners no right to be heard; (6) no sufficient interest was shown.

The *locus standi* of the gas company was objected to on grounds similar in all respects.

Michael (for the water company): A clause was introduced in the House of Lords for our protection, and that of the gas company, making provision as to the manner in which alone our pipes may be removed, in the progress of the works sanctioned by the bill, and securing to us compensation for any loss, damage, or injury, we may sustain in consequence of the operations of the board. Where parties are named in a clause of this kind, they have a right to appear and state their reasons for contending that the provision made for their protection is inadequate. The clause was inserted by the promoters, at the instance of the Lords' Committee, after we had left the room, being refused a *locus standi*. We say now that the clause amounts to an alteration of the general law. By the Public Health Act, 1848, (section 71), no alteration is to be made "which will permanently injure any such pipes, mains, plugs, or works, or prevent the water or gas from flowing as freely or conveniently as usual." The bill, however, at three days' notice, would enable the promoters to remove, alter, and replace the pipes "as speedily as may be," only stipulating for "such temporary or other works . . . for guarding against any interruption of the supply of water, or gas respectively, as the case may require."

Mr. RICKARDS: Is it physically possible to alter the position of the pipes without interrupting for the time the flow of the water?

Michael: Yes; by putting in a branch pipe.

Mr. RICKARDS: They must make a junction with that branch pipe?

Michael: Yes; a syphon junction. This takes the place of the pipe that ran in a straight line; and they have thus a means of enabling the gas and water to flow as conveniently as it did before. But what we fear is that a large intercepting sewer may be driven through the middle of our water-works. The promoters take power to spend £50,000; yet lodge no plans whatever.

Mr. RICKARDS: They are not bound to do more than the S. O. requires?

Michael: Had the bill been treated as one of the second class, they must have deposited plans, and we should have seen exactly what is intended. But they take a roving commission over the whole of the district.

Mr. RICKARDS: The Referees are not bound by the decision of the House of Lords: but, apparently, you were refused a *locus standi*, when there was no protecting clause in the bill. Now that one has been inserted, you seek to be heard on the ground of its insufficiency. Was it made a condition of passing the bill by the House of Lords that a protecting clause should be inserted?

Michael: The Committee said the promoters ought to put in a clause which should adequately protect the interests of the water company. I hold that this clause does not do so. If the separate sewer authorities already possess the

powers contained in the bill, why do they come to Parliament?

Mr. RICKARDS: Because the bill empowers these different bodies to combine together and act as one.

Michael: The general law has provided for a junction of authorities.

Mr. RICKARDS: It also fixes the proportion of the amount chargeable upon each of the parishes.

Michael: Upon that we, as ratepayers, wish to have a voice, in fixing the right proportions and seeing that we are not too heavily burdened. This is not the ordinary case of representation; for the promoters seek to vary the general Acts, and to do away with restrictions which, under the general Acts, protect the interests of the ratepayers. The Public Health Act, 1848, (section 45), gives power to local boards of health to carry any sewer belonging to them wherever, upon the report of the surveyor, it may be necessary; but this must be a main sewer, not a private, a subsidiary, or an intercepting sewer.

Venables, Q.C. (for promoters): Where is that stated?

Michael: It has been decided that a subsidiary sewer is a private work, and that an "intercepting" sewer is a subsidiary sewer. By the Sewage Utilization Act, 1865 (section 4), sewer authorities obtained the powers given to local boards of health under section 45 of the Public Health Act, 1848; and, by the Sewage Utilization Act, 1867 (section 3), the right of exercising, without their district, similar powers in relation to the distribution of sewage, to those already exercisable by them within their district. Section 10 of this latter Act enables sewer authorities, assenting to such a course, to make application to the Secretary of State for an order constituting a joint-sewerage district; and the Secretary of State may grant the order "on being satisfied of the expediency of such union." The fact, recited in the bill, that one of these districts has not assented, shows that the promoters are trying to alter the general law, and to get rid of the necessity for the Secretary of State's consent, which, as matters stand, they are prevented from obtaining. Moreover, before the Secretary of State gives his consent, an inquiry in the district becomes necessary.

Mr. RICKARDS: What parties have the right to object before the Secretary of State?

Michael: Every ratepayer in the district proposed to be united.

Mr. RICKARDS: A water company, or a gas company, for instance?

Michael: They have a double right; as owners of property, and ratepayers. But this bill ignores the rights both of landowners and ratepayers. Under the general law, before a sewer authority can take any land without their district, for outfall and distribution, they must give three months notice in the newspapers; time must be allowed for sending in objections; and an inquiry must be held by a Government inspector. (Local Government Act, 1858, sec. 75.) Where it is proposed that adjoining districts shall unite and jointly execute sewerage works, the consent of owners and ratepayers must first be obtained. (*Ibid.* sec. 27, 28, and 13.) Again, a sewerage

authority may spend the current rates as they think desirable; but before money can be borrowed for permanent works, the sanction of the local government board, involving a previous inquiry, must be obtained. (*Ibid.* sec. 57, 78.)

Mr. RICKARDS: How do you contend that your land will be interfered with?

Michael: Under this bill there is nothing to prevent the promoters from taking their main sewer right through the centre of our reservoir.

Mr. RICKARDS: You also claim to appear, in your character of ratepayers, against the whole scheme, on the ground that it goes beyond the powers of the general Acts?

Michael: Yes.

Mr. RICKARDS: As far as regards your claim to a *locus standi* as ratepayers, you must be subject to the rules of *locus standi* under which petitioners are allowed to appear against a bill. The fact that the general law gives power to any ratepayer to appear before the Secretary of State, does not furnish any authority for the claim of a ratepayer to appear before a Committee. That right stands upon its own distinct grounds; and you can only appear in that capacity provided you can bring your case within the precedents and rules governing the case of ratepayers.

Michael: I think this is a case *prima impresse*, no case hitherto having been decided upon this point. Assuming that a ratepayer has, by the public Act, a right to be heard, ought he not equally to be heard against a bill proposing to over-ride the public Act? By the Local Government Amendment Act, 1861 (sections 4-7), three months at least before the commencement of any outfall, drain, or sewer, notices and plans are to be deposited by the local board; and any owners, leasees, and occupiers of the lands affected, and any overseers, trustees, surveyors, and others having the care of roads or streets affected, desiring to be heard in opposition, are secured a hearing before the Government inspector. All these safeguards will be done away with by the bill. But the undertaking of a waterworks company is as important to the community as an outfall sewer. As ratepayers, we are in an exceptional position, for we are asked to contribute large payments to a board, upon which we shall not be represented, but only through a body which is a constituent of that board.

Mr. RICKARDS: The objection is capable of being raised, that the petitioners are only a small minority, and do not represent the ratepayers of the district?

Michael: The waterworks company must be regarded as a class by itself. In one sense it may be said to represent all the ratepayers, for the rates which it has to pay will eventually come out of their pockets.

Littler (for the gas company): I pray in aid the arguments already used. The bill professes merely to authorise the union of eight districts, one being a dissentient. But it is a suspicious circumstance that this eighth district does not petition; this, therefore, is not the only object that the promoters come for. They do not incorporate the sewage Acts in their integrity. And, further, if they desired to give the protection designed for us by the House of Lords

they would have incorporated the Gas and Water Works Clauses Acts. The constitution of the proposed board is different from that contemplated by the general Acts, in the case of the union of districts. For the bill provides, first, for the continuance of the existing sewer authorities, and then for the election of a joint sewerage board, as to which it enacts:—"Subject and according to the provisions of this Act, and for the purposes of the execution and maintenance of such intercepting and outfall sewerage, and other works, (authorised by the Sewage Utilization Acts to be made by a sewer authority as such) as in the opinion of the board are from time to time necessary or proper for the purpose of intercepting, storing, disinfecting, and distributing the sewage of the Nottingham and Leen district, but not further or otherwise, the board shall be the sewer authority for the Nottingham and Leen district." Therefore, we, as ratepayers in all the eight districts, are to have a new master put over us, who is to have a separate jurisdiction and the power of judging what is necessary for his own purposes. He is to exercise all the powers of sewer authorities; but none of the rights of landowners and ratepayers under the general Acts are preserved, Clause 62 merely providing that if the owner or occupier of lands is injuriously affected by the powers of the bill as to sewers, the board shall pay him compensation; and as to a company affected, it is to be compensation settled by arbitration. We, as landowners, if driven to go elsewhere, must come to Parliament for fresh powers; mere compensation, therefore, is inadequate. We are not ordinary ratepayers, but representatives of the public, discharging important duties in their interest as well as our own. By the introduction of Clause 63 the promoters admit that we have a sufficient interest; and cannot deny it by their objections. We are entitled to have the clause put into a proper shape, or at any rate to explain why it does not satisfy us.

Venables, Q.C. (in reply): Clause 63 protects the petitioners. It is an admission on our part, but gives us no power against them; it is an addition to any rights they possess independently.

Mr. RICKARDS: This bill would impliedly empower the board to alter, disturb, or interrupt the supply, "so far as may be necessary," for it prohibits them from doing so to any greater extent.

Venables: If the clause said they should not be able to take lands in Yorkshire, except after giving three days' notice, that would not empower them to take lands in Yorkshire.

Mr. RICKARDS: But this bill authorises works?

Venables: No; only the consolidation of the district. There is no power of rating, and no power of construction.

Mr. RICKARDS: It provides that "the board shall be a sewer authority for the purpose of the execution and maintenance of such intercepting and outfall sewerage, and other works."

Venables: There is no works clause. It is a mere transfer of powers, already existing, to the board. Had there been any works, this would have been a second-class bill, and plans must have been deposited.

Mr. RICKARDS: You have inserted a clause for

protection against contemplated injury the bill. You do not mean to say that 68 is altogether nugatory?

ables: Even if it be nugatory, it can do no harm; as far as it goes, it is a protection. The gas company, as ratepayers, represented in all the districts; and so are the company in those districts where they have no. The only rating powers in the bill are enabling us to set in motion the constituent rates, who possess these powers already.

RICHARDS: There is a power to borrow; that is a charge upon the rates?

ables: That clause is only to afford the power of borrowing one large, in place of several sums, and the borrowing is subject, as in the Local Acts, to the sanction of the Local Government. The Secretary of State is not obliged to ratepayers, but may do so for his own protection. We do, by a clause, protect the rights of landowners. But as to interference with rates, we only take over the powers of the rating authorities.

ables: Where is the existing power to make a sewer?

ables: If the existing boards have not the power to make it, we shall not have the power. The question arising as to its being a public or private sewer, would have to be determined in the ordinary course of law. Had these eight districts agreed, there would have been no objection for the bill, and petitioners could not have objected to the powers which would then have been jointly exercised by the districts under the general Acts. To the provisions of the Local Acts we are still liable. As to the Gas and Waterworks Clauses Acts, who ever heard of incorporation in a bill like this, not dealing with gas or water? The petitioners failed to show any aggression made upon property, or any fresh burden thrown upon it.

As regards the policy of uniting the districts, none of these districts themselves oppose. Clause 68 is a protection to the petitioners, and is, superfluous.

CHAIRMAN (after deliberation): The *locus standi* of both the petitioning companies is established against Clause 68.

Consents for Bill, *Dorington & Co.*

Consents for Gas and Water Companies, *Dyson*

Railway—Private Landowners, consent of—Railways Construction Facilities Act, 1864, and Amendment Act, 1870—Competition—Board of Trade—Provisional Certificate, effect of—Practice of Parliament notwithstanding—Compulsory Powers over Land—Crossing Public Roads.

The Board of Trade granted a Provisional Order for the incorporation of a company to construct a short line of railway, over land belonging to two gentlemen who had consented to the making of the line. The proposed line formed a junction with an existing railway, the company owning which were authorised by the bill to subscribe towards and work the new line. Another company with whose system the line thus connected would compete, opposed the bill, which had for its object to confirm the provisional certificate. The promoters contended, that, as the assent of Parliament only became necessary because the line crossed certain public roads, the Court ought not to treat this on the same footing as a bill which sought for compulsory powers of purchasing lands, and should not therefore grant a *locus standi* to petitioners on the ground of competition; otherwise, the object of the Railways Construction Facilities Act, 1864, would in effect be frustrated. The petitioners urged that the bill was really promoted in the interests of three rival railways; and that Parliament ought to act upon its ordinary principles, disregarding the action of the Board of Trade:

Held, that the competition being apparently clear, the petitioners had a right to the same opportunities of objecting to the bill as they would have enjoyed in the case of an ordinary bill; and *locus standi* therefore allowed.

RAILWAYS PROVISIONAL CERTIFICATE OF CONFIRMATION (WIDNES RAILWAY) BILL.

June, 1872.—(Before Mr. ST. AUBYN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICHARDS.)

On behalf of the LONDON AND NORTH-WESTERN RAILWAY COMPANY.

The bill was one "to confirm a provisional certificate made by the Board of Trade, under the Railways Construction Facilities Act, 1864, and the Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870, for the incorporation of the Widnes railway company and for the construction of the Widnes railways," three small lines with a share capital of £80,000; power being also sought to authorise the Manchester, Sheffield, and Lincolnshire company to subscribe not exceeding £40,000, and to work the proposed railways in conjunction with the "Cheshire lines committee" by means of a joint committee.

The petitioners alleged that the intended railways were promoted in connection with the extension line from Manchester to Liverpool—

now vested in the Cheshire lines committee, but projected by the Sheffield company; that this extension line was not yet opened, that the intended lines were so laid out as almost to touch the lines of the petitioners from Liverpool to Warrington and Widnes, and also from Widnes to St. Helen's, and the sidings connected therewith; that these lines would compete injuriously with those of the petitioners; that such competition was altogether new; and that the real promoters were the Sheffield company and the Cheshire lines committee, who wished thereby to obtain a footing for ulterior aggressive measures against the petitioners.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs will be taken and no power is sought to use their railway stations or accommodations; (2) the proposed railways will not compete or interfere with theirs; (3) they will be constructed wholly on the lands of Sir Richard Brooke, Bart., and John Bibby, Esq., and for the accommodation and development of their lands and property respectively, and the provisional certificate is promoted solely for those purposes, and at the instance of Sir Richard Brooke and John Bibby; (4) the petitioners allege no grounds for a *locus standi* according to practice.

Round (for petitioners): The Cheshire Lines committee represents the Sheffield, Great Northern, and Midland lines. The Railways Facilities Act was not intended to facilitate the construction of railways to the prejudice of any other line where the question of competition arises. It enabled parties, if they could procure the consent of landowners to sell their land, to go before the Board of Trade and obtain a Provisional Order, which, when sanctioned by Parliament, is tantamount to an Act; but Parliament never intended to divest itself of its power of control in the matter.

Horace Lloyd, Q.C. (for promoters): If the petitioners had not interfered in this case, no bill would have been necessary. As soon as the consent of the landowners was obtained, the order of the Board of Trade would have given the power of crossing public roads, and of exercising all the rights ordinarily given to a railway company by a bill. Originally, if a railway company opposed, the order stopped altogether; but now, if a railway company interferes, the Board of Trade are simply bound to bring in a bill to confirm their certificate.

Round: Parliament never could have contemplated that, if the scheme really competed with an existing line, the company owning that line should be precluded from opposing it because it came before Parliament with the previous sanction of the Board of Trade. Under the Act of 1870, the bill confirming a provisional certificate is to be treated, for purposes of *locus standi*, as an ordinary bill (section 4); and the fact that the line is to extend over the land of two individuals makes no difference where the competition with an existing line is, as it is here, direct, substantial, and obvious.

Horace Lloyd (in reply): The promoters here stand in an exceptional position. Under the Railways Facilities Construction Act, 1864, the Board of Trade was empowered to certify for

the construction of the line, when the landowners consented, except in case of opposition, from a railway or canal company. In that case the Board of Trade was ousted from its jurisdiction. In 1870, the Board was authorised to take cognizance of such opposition from a railway or canal company, and might refuse to grant a certificate, if they thought the objections rested on a substantial basis; but if, in spite of such opposition, the certificate was granted, it was to be provisional only, and to have no effect till confirmed. The London and North Western have the same right to petition against us as if we were promoting a private bill; but it by no means follows that in cases where a discretionary power is given to the Referees, it will be exercised exactly in the same manner as if we were coming with a bill to take compulsory powers over land. Otherwise, the effect would be to make the Act of 1864 to a great extent a dead letter, or to make it the means of spending more money than would otherwise have been spent. The intention of the Act was to enable landowners to agree among themselves for the construction of short lines of railway. They could have done that without asking for a certificate from the Board of Trade, as long as they did not cross public roads; but when they required to carry the railway across public roads, it was necessary for them to get statutory powers to do so. If one case more than another was pointed to by the Act it was the case of landowners, having properties which immediately adjoin, and wishing to develop those properties by running a spur from a neighbouring railway over their own lands. That is the case here. These two gentlemen propose to make a small branch railway, the whole length of the line being three miles. Instead of applying for powers in their own name, they get a company to do so; but in truth the line is for their interest, and for the development of their property. This is not, therefore, a case where, in the exercise of their discretion, the Court of Referees will allow the petitioners to be heard. As to the question of competition, it is possible that traffic may be taken along the new railway to the Cheshire lines; but these two gentlemen might have given their land to make a public road, along which traffic would be taken to the Sheffield railway. The North Western company could not have complained of that arrangement. All we are asking is to put our land, already adjoining the Sheffield railway, into connection with it by a more convenient route, over which locomotives will work, instead of by a road over which cars would go.

The CHAIRMAN: The *locus standi* of the London and North Western railway company is *Allowed*.

Agent for Petitioners, *Blenkinsop*.

Agents for Bill, *Wyatt & Co.*

RYDE AND NEWPORT RAILWAY BILL.

27th June, 1872.—(Before Mr. ST. AUSTIN, M.P., Chairman; Sir JOHN DUCKWORTH; and Mr. RICHARDS.)

Petition of (1) The ISLE OF WIGHT (NEWPORT JUNCTION) RAILWAY COMPANY.

Practice—Lodging of Objections—Seven Clear Days—Whitsuntide Holidays—Rule of Court—“Special Circumstances”—Office Closed—Time for Serving Objections Extended.

A petition against a railway bill was deposited May 13th. On the 14th the House of Commons adjourned for the Whitsuntide holidays, and did not re-assemble till the 27th. Before adjourning, the House passed a resolution which extended the time for depositing petitions against private bills till May 27th, but was silent as to the time for serving objections to *locus standi*. The notices of objection in this case were lodged on the 24th, after the “seven clear days” allowed by the rules had expired, but it appeared in evidence that the notices would have been lodged at the proper time had the office of the Court of Referees remained open during the holidays :

Held, that as the office of the Referees was closed at the time the notice should have been served, the promoters were not liable for default, the Referees having, “under special circumstances,” a discretionary power of dispensing with service within the time limited by the rule.

Little (for petitioners) : There is a preliminary question for decision as to the service of the objections here. Under the amended Order promoters are required to give notice of objection “to the clerk of the Referees and the agents not later than seven clear days after the lodging of the petition.” Our petition was lodged May 13; the notice of objection was not lodged till May 24. It is true the Whitsuntide holidays intervened, commencing on the 14th and ending on the 27th; but clearly they had nothing to do with the delay, because the objections were deposited three days before the holidays expired. Further, on the motion of the chairman of Ways and Means, the House resolved that the S. O. [as to presentation of petitions] be suspended, and the time for depositing petitions against private bills be extended to May 27; but nothing was said of any extension of the time for lodging objections to *locus standi*.

Rodwell, Q.C. (for promoters) : It was understood by our agents that the extension of time applied both to petitions and to *locus standi* objections. The Court has a discretion in such cases; for the Order says “it shall be competent to the Referees to allow such notice to be given under special circumstances, though the time above limited shall have expired.” I ask the Court to deal with the case as one in which there are special circumstances. [See Rule I. post, 301.]

Little : The discretion only refers to an application for leave to deposit.

[A clerk in the service of the agents for the promoters was examined, and stated that he had gone to the Referees’ office two or three times during the vacation, and before the 24th, in order to serve the notice of objections, but found the office closed: was told that other agents were leaving their notices with the doorkeeper; he would not do so, but went again on the 24th, when the office was open: had not served the agents on the other side before May 24, because he thought it was of no use serving them, without lodging the objections at the Referees’ office.]

[Mr. Thos. Feilden Mitchell, clerk to the Referees, said he received the notices in this case when the office re-opened on the 27th. It had always been the practice to close the office when the House adjourned, and to take the notices as deposited upon the first day the House met. Some notices were left with the doorkeeper during the Whitsuntide vacation, but all were entered as deposited on the 27th.]

The CHAIRMAN : In this case, the Referees consider that, the office of the Referees having been closed during the Whitsuntide recess, at the time the notice should have been served, the promoters ought not to be held liable for the default.

Service of Notice Upheld.

Petition of SAME.

Railway—Competition—Powers of Purchase and Construction of Works—Expiration of Taking of Lands—S. O. (when Railway Companies to be heard)—Discretionary Power of Court—Running Powers—Landowner—General Locus Standi.

Where a railway company promotes a bill to take compulsory powers over lands, the property of another company, the Court will treat the petitioning company like other land-owners and grant a general *locus standi* under the S. O. The Referees will only use their discretionary power of limiting the *locus standi* where the company promoting the bill seeks to run over the line

of the petitioners, or to use their accommodations, &c. (*Ante*, 256.)

The bill was one for the construction of a direct line of railway between Ryde and Newport. It was opposed by the petitioners as land-owners, and on the ground of competition.

The objections did not traverse the fact that land of the petitioners would be taken under the bill, but urged that their power of purchasing land and constructing works had expired, that no part of their line had been completed, that they were without financial resources, and that under such circumstances, they should not be allowed to oppose the bill on the ground of competition, since their railway could not now be completed without further Parliamentary powers, and no competition could arise unless the line were completed.

Little (for petitioners): The promoters seek power to take land belonging to us, and other lands agreed to be purchased by us, and we allege that the taking of this property is incompatible with the construction of our line.

Rodwell, Q.C. (for promoters): It is true we are struggling for the same piece of land; but under S. O. 133, as now altered, the Referees can limit the *locus standi* of the petitioners, instead of giving them a general *locus*.

Little: The objections do not traverse our allegations as to the ownership of this land, nor do they suggest that we are entitled only to a limited *locus standi*.

Mr. RICKARDS: In a case this session, in which one railway company proposed to take the land of another railway company (*Ante*, 256), we construed the S. O. to mean that where the land of a railway company was taken, the company had a general *locus standi* like any other landholder; but that where powers were merely sought to run over the lines of another company, the Referees would exercise a discretion as to whether the *locus standi* should be general or limited.

Locus standi Allowed.

Agent for Isle of Wight (Newport Junction) railway company, *Batten*.

Petitions of (2) MAGISTRATES AND INHABITANTS OF NEWPORT; and (3) MAGISTRATES AND INHABITANTS OF RYDE.

Railway—Bridge Across River—Fixed or Opening—Interference with Navigation—Wharves and Warehouses—Shipowners and Inhabitants—Sufficient Representation of—Municipal Corporation—Agreement between, and Promoters—Counter Petitions—Town at mouth of River—Level Crossings in—Accommodation Works—Tramways—Use of Locomotives upon—Representation.

A railway company proposed to cross a navigable river by a fixed bridge, but subsequently agreed with the corporation of Newport to substitute a swing-bridge and construct other works; in consideration of which it was alleged that the corporation withdrew their opposition to the bill. A petition was, however, presented by shipowners and other inhabitants, who complained that the navigation would be injuriously affected, whether the bridge constructed were fixed or opening. Another petition was presented by 44 out of 12,000 inhabitants of Ryde, (situate at the mouth of the river), and not therefore affected by the proposed bridge, who alleged that under certain circumstances the promoters would be authorized by the bill to use a local tramway, and might cross some of the leading thoroughfares of Ryde on the level with locomotives. The corporation of Ryde however had obtained concessions satisfactory to them, and petitioned in favour of the bill, together with "several hundreds" of the inhabitants:

Held, that the inhabitants of Newport were entitled to appear; but that the Ryde petition was an insufficient representation of the inhabitants, and that the *locus standi* must be disallowed.

The bill proposed to carry the railway across the Medina by a fixed bridge, having a 40 feet span, with 16 feet headway above high water mark. Since the bill was deposited the promoters had agreed with the corporation of Newport that the bridge should open for the passage of vessels.

The Newport petition urged (*inter alia*) that the Isle of Wight (Newport Junction) railway company proposed a swing-bridge at the same point; that it was inexpedient to authorize the construction of a second bridge there; and that the object of the bill—the connection of Cowes, Newport, and Ryde—would shortly be attained by the line of the company just mentioned, which was being made.

The petitioners from Ryde objected to the bill because it would authorise the promoters to use the railways and tramways of the Ryde pier company, and, under certain circumstances, to cross on the level with locomotives some important thoroughfares; this, they urged, would be prejudicial to the interests of the town and dangerous to life; while the promoters would obtain by a side-wind with regard to these tramways, powers which Parliament had invariably refused when applied for by direct legislation.

The *locus standi* of magistrates, &c., of Newport was objected to, because (1) no lands, &c.,

irs are taken; (2) a petition presented by corporation of Newport on behalf of the and of persons entitled to use the river a, and the wharves and property ad; thereto, was withdrawn on the signing promoters of an agreement to construct le works for the accommodation of the and to make the bridge over the a an opening and not a fixed bridge; (3) ipping interests of the port and the ware- s and stores will not be prejudicially ad, and no obstruction of the river can

(4) the petition alleges that the con- ion of the proposed Ryde and Newport y will create competition with another om Newport to Sandown which was autho. in 1868, but no part of which has yet been d for traffic; it is contrary to the prac- f Parliament that inhabitants should be against a bill on the ground of competition another company whose Parliamentary s have expired; (5) no rights or interests ; petitioners are so affected as to entitle to appear; (6) they cannot be heard ling to practice.

, *locus standi* of the magistrates, &c., of was objected to, because (1) no lands, &c., sirs are taken, and no rights enjoyed by affected; (2) they have no interest in the gh or streets of Ryde entitling them to be : the corporation of Ryde have petitioned our of the bill, and have procured the in- m in it of all proper and necessary provi- for the protection of the streets and roads he crossing thereof with locomotives; (3) stition is not the *bond fide* petition of magi- s, &c., of Ryde, and does not express the : feeling of the inhabitants, several hun- of whom have signed a petition in favour e bill; (4) the petitioners cannot be heard ntly with practice.

ller (for magistrates and inhabitants of New- and Ryde): The Isle of Wight (Newport Junc- railway company are authorised to cross fedina by a swing-bridge under agree- with the corporation of Newport, and to a road bridge (which is also to be a swing- e) across the Medina. The promoters e to cross the river by a fixed bridge, t will seriously affect the navigation, and nt vessels from reaching the Newport as they now do; and the warehouses and : situated there will be most prejudicially ed.

dwell, Q.C. (for promoters): We have agreed ke our bridge a swing-bridge.

ller: According to the deposited plan and ill, the bridge is to be a fixed bridge;

but even if it be an opening bridge, it will from its position, seriously interfere with the navigation, and the rights of the Newport petitioners. We also object to a second railway into Newport; the traffic can only support one. Of a population of 8,000 the petition is signed by 326, including twelve out of eighteen members of the town council, every shipowner in Newport, most of those who can be called merchants, and a large majority of the traders. Last year the petitioners were heard on exactly the same allegations (*Ante* 213). The fact that the corporation of Newport do not appear is an additional reason why we should be heard, for other- wise nobody will represent the local inte- rests. The Ryde petitioners complain that under the bill the promoters may use parts of the tramways of the Ryde pier company, and that some of the most important streets of the town might thus be crossed on the level with loco- motives.

Mr. RICKARDS: How many persons sign the petition?

Little: Forty-four. That is a sufficient proportion of inhabitants whose interests are inju- riously affected; some of the petitioners actually live in the streets which may be crossed.

Rodwell (in reply): At Ryde only 44 inhabi- tants out of 12,000 petition against the bill. The corporation withdraw from opposing the bill, having procured the insertion of clauses which are for the protection of the whole town; and the petitioners show no special grievance, for the fact that they live on the line of streets that may be crossed for the purposes of traffic, is too remote an interest to confer a *locus standi*. As to the Newport petition, one has been presented from that town in favour of the bill, containing more signatures than this. But as at Ryde, so at Newport, the corporation are satisfied.

Little: The corporation of Newport petition in favour of our bill, but having no funds they cannot appear to oppose this bill.

Rodwell: It has not been the practice of the Referees to allow inhabitants to be heard except under special circumstances, which do not exist here. This is, in fact, an opposition got up by shareholders in the rival railway. Last year the petitioners were let in because we proposed a fixed bridge.

The CHAIRMAN (after deliberation): The *locus standi* of magistrates, tradesmen, and other inhabitants of Newport is *Allowed*. The *locus standi* of magistrates, tradesmen, &c., of Ryde is *Disallowed*.

Agents for Bill, Porter & Tyrynam.

Agent for Petitioners, Batten.

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PRIVATE BILLS.

RULES for the PRACTICE and PROCEDURE of the REFEREES ON PRIVATE BILLS, under Standing Order 98.

1. The Promoters of any Private Bill, who intend to object to the right of Petitioners to be heard against the same, shall give notice of such intention, and of the grounds of their objection, to the Clerk to the Referees and to the Agents for the Petitioners, not later than the eighth day after the day on which such Petition has been deposited in the Private Bill Office; but it shall be competent to the Referees to allow such notices to be given, under special circumstances, although the time above limited may have expired. All notices shall be indorsed with the names of the Petitioners' Agents.

Notice of Objection to be given, and how to be given.

2. Parties who have given such notice as above, may at any time withdraw the same by giving notice of withdrawal to the Clerk to the Referees, and to the Agents for the Petition.

Notice of Objection to be given, and how to be given.

3. The cases shall be heard in such order as the Chairman of Ways and Means shall appoint, and according to a list prepared under his direction, and kept in the office of the Clerk to the Referees.

Order in which cases shall be taken.

4. When a Bill is called on for consideration, the Agents for the Petitioners against the same shall be required to produce a certificate of appearance from the Private Bill Office, in which shall be stated the names of the Petitioners, their Counsel and Agents.

Certificate of Appearance to be produced.

5. Not less than one clear day's notice shall be given by the Clerk to the Referees to the Clerks in the Private Bill Office, of the days on which the objections to the right of Petitioners to be heard will be severally taken into consideration by the Referees.

Notice of Hearing to be given through the Private Bill Office.

6. All notices required to be given, or deposits to be made in the office of the Referees, shall be delivered in the said office before five of the clock in the evening of any day on which the House shall sit, and before nine of the clock on any day on which the House shall not sit.

7. All notices to Agents shall be served before six of the clock in the evening of any day on which the House shall sit, and before two of the clock on any day on which the House shall not sit.

(Signed) JOHN BONHAM-CARTER,

Chairman of Ways and Means.

House of Commons,
26 February, 1878.

It is ordered by the CHAIRMAN of WAYS AND MEANS,—That—

1. Two clear days at least before the day appointed for the consideration of any Private Bill by a Committee of which a Referee has been appointed a Member, a filled-up Copy of the Bill, as proposed to be submitted to the Committee, shall be deposited by the Agent at the Office of the Clerk to the Referees, for the use of such Referee.

2. Copies of all the Petitions, upon which Opponents of a Bill intend to appear before such Committee, shall also be deposited at the Office of the Clerk to the Referees, by the respective Agents for the Opponents, two clear days at least before the day appointed for consideration of the Bill.

(Signed) JOHN BONHAM-CARTER,

Chairman of Ways and Means.

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